

the said premises shall at all times be used for schoolhouse grounds or otherwise this deed shall become null and void."

You advised me that a school building was constructed upon the property within five years after the date of the deed and the building was used as a school until 1951 and thereafter was used for storage purposes by the school district. You ask in particular:

1. If the phrase in the deed "for schoolhouse grounds" precludes the use of the real property for the location of a teacherage.

2. If the school district has lost the right to use the land due to closing of school on the property in 1951.

3. If the rule against perpetuities has application to the right of re-entry expressed in the deed.

In answering your first question concerning the use of the property "for schoolhouse grounds" it is necessary to consider the case of State ex rel. Jay vs. Marshall, 13 Mont. 136, 32 Pac. 648, where our court gave a liberal interpretation to the term "schoolhouse" and said:

"When the statute provides that the school trustees shall have power to remove 'school-houses' only when directed by a vote of the district so to do, we are of opinion that the term 'school-house' does not mean simply the house, but refers rather to the school plant, including the general equipment, furniture, maps, charts, globes, and pupils and teacher."

The above-quoted case was referred to with approval in the case of McNair vs. School District No. 1, 87 Mont. 423, 288 Pac. 188, and where it was held that school grounds and school plant include all physical equipment necessary to the operation of a school. A teacherage, as a place of residence for a teacher, would usually be a part of a schoolhouse or be located on the school grounds and therefore a part of the school plant. It is reasonable

Opinion No. 92

Schools and School Districts— Deeds — Conditional Limitations — "School Purposes" — Perpetuities

HELD: 1. The use of school property received by the district in a deed which stated that the premises shall "be used for school house grounds" may be used as a location for a teacherage without violating the restriction, as a teacherage is a part of a school plant.

2. Premises conveyed to a school district to "be used for schoolhouse grounds" reverts to the grantor or his heirs upon the cessation of use for school purposes.

3. A conveyance of land to a school district upon condition that the land be used only for school purposes does not violate the rule against perpetuities.

Mr. J. W. Hall
County Attorney
Liberty County
Chester, Montana

Dear Mr. Hall:

You requested my opinion concerning the legal affect of a deed to a school district dated September 19, 1911 in which deed it is provided:

"WITNESSETH, that as a part of the stipulations of this deed the parties of the second part herewith agrees to erect within the period of five years from date; on the lots above described, a public school building at a cost of not less than seven thousand dollars, and that

to assume that the construction of a teacherage on real property would comply with the requirements in the deed that the property be used for schoolhouse grounds.

Your second question must be construed in conformity with the express language used in the deed. In substance, the deed states that if the premises are not used for school purposes the conveyance is terminated. In Section 67-519, R.C.M., 1947, a conditional limitation is recognized as follows:

"A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation."

Many cases have recognized the right of reverter contained in deeds such as the one under consideration here. The general 19 Am.Jur. 497, in the following language:

"Of course, where a deed given without consideration contains a recital of the purpose for which the land is to be used and clearly provides for a reverter to the grantor or his successors in interest upon failure of such use, the intention of the grantor that such stipulation shall be regarded as a limitation is clear, and a determinable fee only has been created, so that if the property ceases to be used for the recital purpose, the grant expires."

From this statement it must be concluded that upon the cessation of use of the premises for school purposes in the year 1951, the heirs of the grantor had the right to claim the title to the property. A case that is similar to the facts presented here is that of *Kennedy vs. Kennedy*, 183 Ga. 432, 188 S.E. 722, 109 A.L.R. 1143, where land was conveyed to a school district "to be held by said trustees so long as said land is used for school purposes." The court, in its opinion, held that upon the abandonment of the school the title to the land vested in the grantee of a deed executed by the original grantor subsequent to the deed to the trustees.

The rule against perpetuities has no application to a right of re-entry as provided in the deed to your school district. The rule is well expressed in 41 AM.Jur. 75, as follows:

" . . . Thus, a conveyance of land to a school district upon condition that the land be used only for school purposes, the land to revert to the grantor if the district ceases to use the land for school purposes or uses it for any other purpose, does not violate the rule against perpetuities, as the possibility of reverter vests in the grantor, which he may convey and which descends to his heirs or which he may transmit by will . . ."

It is therefore my opinion:

1. That the use of school property received by the district in a deed which stated that the premises shall "be used for schoolhouse grounds" may be used as a location for a teacherage without violating the restriction, as a teacherage is a part of a school plant.
2. That premises conveyed to a school district to "be used for schoolhouse grounds" reverts to the grantor or his heirs upon the cessation of use for school purposes.
3. That a conveyance of land to a school district upon condition that the land be used only for school purposes does not violate the rule against perpetuities.

It would appear to me that the original grantor by his deed intended to make the premises available for the use of the school district and the heirs of the grantor might feel it advisable to convey by quit claim deed their possible right of reverter and thus make available to the school district the property their ancestor intended the school district to have.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.