

## **Opinion No. 17-2039**

August 3, 1917

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Mr. Lacy Simms, County Superintendent of Schools, Alamogordo, New Mexico.

School Districts Should Take Title to Property in Fee Simple.

### **OPINION**

In answer to your inquiry of the 19th ult., as to whether or not a county Board of Education can erect a school building on land for which the title is a ninety-nine year lease to the Board, and also whether the Board could accept a deed and erect a building on land in the title to which there is a restrictive clause providing that if the land is used for other than school purposes it shall revert to the vendor, we advise as follows:

Section 5 of Chapter 105, Laws of 1917, reads in part as follows:

"Said board shall also have power to contract for and purchase all sites, buildings, equipments or other property for schools."

You will notice that the power given in the above statute is to purchase, but there is no authority given to lease. In our opinion, the policy of the law is for school districts to own fee simple to the land on which the school buildings are erected. Dawson v. Common School District, 115 Ky. 151, 24 Ky. L. Rep. 2027, 72 S. W. 806. This view is further borne out by Section 29, Chapter 105 of the 1917 Session Laws, the concluding part of which reads as follows:

"The site in all cases shall be procured by the school directors unless the county board of education otherwise directs, and the title thereof be vested in fee simple in the county board of education."

We therefore advise the school district to acquire title to the proposed site in fee simple.

As to whether a building may be erected on land the deed to which provides that if the land is used for other than school purposes, the title shall revert to the grantor, we see no objection to this provision in the deed, in that a school district can only acquire or hold property for school purposes. However, we think the reversionary clause in the deed would be better if it read "upon districts ceasing or failing to use the property for school purposes, the title shall revert," etc., rather than that it should revert if the land were used for any other purposes. This applies whether the funds are raised by sale of bonds or by taxation.