

## Opinion No. 38-2027

August 9, 1938

**BY:** FRANK H. PATTON, Attorney General,

**TO:** Mr. Chas. H. Wood, Superintendent Wagon Mound Public Schools Wagon Mound, New Mexico

{\*260} We have your recent letter requesting our opinion as to whether there is any way whereby the school district may convey lots to a municipality without following the procedure set up by law for transferring title to individuals.

I presume that you had in mind Section 120-1401 to 120-1412 of the 1929 Compilation which specifically set out a procedure for the sale and conveyance of lots granted by the Congress under the Act of May 23, 1844, 5 Stat. 657, and vested in the school district by the above section.

There is no statute and no method provided for the conveyance of such lots to municipalities in any different manner. You do not state whether {\*261} the lots were of the class mentioned in those sections -- that is acquired under that act.

There is another section, number 120-1414 of the 1929 Compilation, which is generally considered as being a separate and independent provision from the sections preceding it and above cited, and is also generally considered as recognizing the authority of school boards to sell unneeded property, although neither it nor any other statute, except that above referred to with reference to lots acquired under the Act of Congress, expressly gives such authority to the school boards.

The reason for considering this section as a separate enactment affecting all property is that the same was passed in 1891 as Section 36 of Chapter 77, in the following form:

"Sec. 1592. That all transfers of school district property heretofore made in any school district in this territory, are hereby declared valid and legal, and hereafter school district property shall not be transferred by school boards, except upon the petition of a majority of the qualified electors of any school district desiring such transfer." -- Sec. 1592, C. L. 1897.

Whereas the provisions contained in 120-1401 to 120-1412 providing procedure for the sale of lots at public vendue was not passed until 1897 (Ch. 20, Laws of 1897), although in codifying the school laws in 1923 they were all placed as a part of the same act, the School Code Act.

It follows, therefore, that though there is no specific grant of power to sell (which is ordinarily necessary before an effective conveyance of public property may be made), the right to sell and convey is nevertheless recognized by this Section 120-1414, and I

know of several instances where municipalities have so conveyed to municipalities or other public bodies for a cash consideration with the approval of the Superintendent of Public Instruction required by that section, and so far the validity of such transfers has never been questioned.

If the lots are not of the class acquired under the act of Congress, therefore, I would say that sale may be made for cash or its equivalent, without appraisal or public bidding, if approved by the Superintendent of Public Instruction, but I do not know of any authority to convey without consideration for any purpose.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.