

caddie to any person or persons who are engaged in playing the game of golf or as a carrier of newspapers.

The foregoing provision of the act sets out the only exemptions. It is obvious that Boy Scouts and boy members of Y. M. C. A. are not included within these exemptions. My opinion, therefore, is that your practice in requiring certificates provided for in the School Attendance Act should be confirmed and that such certificates are required in these instances.

CIVILIAN DEFENSE ADMINISTRATOR: Plan for building school building in Charlestown Township of Clarke County, Indiana.

SCHOOLS: Procedure in the sale of school buildings and sites; use of funds derived from such sale.

July 30, 1941.

Mr. Clarence A. Jackson,
Civilian Defense Director,
616 Board of Trade Building,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of July 29, 1941, with reference to the school situation in Charlestown Township in Clarke County, Indiana. You state that the Charlestown School Township of Clarke County has made application to the Defense Public Works Administration for a project to construct a school building in Charlestown, Indiana. This application grows out of the fact that the present school building located in a square in the middle of the business section of Charlestown, is inadequate to take care of the school situation due to the influx of defense workers. The plan outlined in your letter assumes that \$600,000 will be necessary to construct an adequate school building, including the needed equipment and the site.

Owing to the limited debt-incurring capacity of the school township under the two per cent constitutional debt limitation (approximately \$27,000), it is apparent that the building cannot be constructed by the township and financed by it in the ordinary method by the issuance of bonds. It is further represented that the civil township has no present debt-incurring capacity so that no help can come from that source.

Confronted with the above situation the Federal government, in order to explore all means of financing the project, has asked the Indiana State Defense Council to obtain an opinion from this department with reference to a plan embodied in general terms in the following, viz.:

"If the Federal Government acquired a site and constructed a school building thereon (assuming that the physical aspects of the building conformed to the wishes of the school township and the requirements of state officials, if any have jurisdiction over school plans) could the school township enter into a lease with the Government under which it would occupy the building and pay rent, the lease containing an option to purchase upon the payment, at one time or in installments, of an acquisition price. The rental would be calculated by taking 3% of the amount of the acquisition price applicable at the time of computation. In this connection, it may be advisable to consider a lease with a term of one year, an option to renew from year to year being accorded the lessee township. Note that at the outset the rental would be 3% of \$600,000 or \$18,000, and as the figure \$600,000, representing acquisition price, was reduced, the option of the township to renew would be at a correspondingly smaller rental for the ensuing term. * * *

It is recognized in the case of *Hively v. School City of Napanee*, 202 Ind. at page 33, that:

"* * * where an ordinary lease is entered into" (referring to a lease of a school house) "at a reasonable rental, for a term of more than one year, a present indebtedness is not created in the aggregate sum of all the annual payments of rent to become due under the lease, and such a lease contract, even though it includes an option to purchase the property, does not violate Art. 13 of the Constitution, if the annual rental installments, as they become due, do not bring the indebtedness to a point beyond the constitutional limit."

In the above case, however, the lease was held to be invalid and in conflict with the debt limitation provisions of the Constitution of Indiana, because the land upon which the building was constructed belonged to the school corporation, was leased

to the building company for a nominal consideration, was by the building company leased back to the school corporation at a rental in excess of a reasonable rental, all of which the Court said created a situation where the school corporation must pay the rental or lose its own property. With these considerations in mind, the Court concluded that the rental contract created an indebtedness within the constitutional provision.

When a similar question came up at a later date in the case of Jefferson School Township v. Jefferson Twp. School Building Co., 212 Ind. 542, such a lease was upheld. In the opinion the Court distinguished the case then under consideration from the Hively case, pointing out on page 550 that, in the Hively case the complaint alleged that the annual rental payments were in excess of a fair rental and that the excess above a fair rental payment was to be applied to the purchase price of the building. The Court, in that case (Jefferson School Twp. v. Jefferson Twp. School Bldg. Co.) continued as follows, quoting from page 550:

"This court cannot say what would constitute a fair rental value of the property involved in the instant suit. The complaint assumes that the Jefferson School Township could not incur an indebtedness sufficiently large to construct an adequate building. The Jefferson Township School Building Company undertook to construct a building which was peculiarly adapted to the needs of the school corporation and which would be of very doubtful market value at the time of its construction and of little or no market value if the school corporation should discontinue its use after a few years' occupancy. Obviously a fair rental value from the standpoint of the building company would be much higher than the fair rental value of a building easily adapted to various business uses and requiring the same amount of investment as the school building. Since at the end of the twenty-five years term the school building would be worth practically nothing to the building company, and unless removed would become the property of the Jefferson School Township, it is clear that a fair rental value during the twenty-five years term should produce an amount sufficient to return the sum actually invested, with a reasonable rate of interest thereon. The fact that the building company was willing to give the school

building to the Jefferson School Township when the building company had been paid an amount equal to its investment and a reasonable return thereon does not change the lease-contract into a contract to purchase. It is true that the Jefferson School Township, through the device of a long term lease providing for annual rental payments, may become the owner of a school building which, in view of Article 13 of the State Constitution, it could not have acquired in 1928 by issuing bonds. But it does not follow that either the arrangement or the result constitutes an evasion of the limitation of Article 13 of the State Constitution. The lease-contract is not in contravention of Article 13 unless it necessarily created a legally enforceable debt obligation for an amount in excess of the amount permitted by Article 13. * * *

Upon the basis of the decision in *Jefferson School Twp. v. Jefferson Twp. School Bldg. Company, supra*, I see no reason which would make it impossible to follow out the general statement of the plan as outlined by you and as above stated. Before this department could definitely pass upon the question, however, it would be necessary to have submitted the entire lease in the identical form in which it is to be executed.

You submit the following further questions:

“2. Should the above arrangement be adopted, could the school township then

“(a) Sell the abandoned schoolhouse and its site and contribute the proceeds to the construction cost of the project, thereby reducing the acquisition cost? Could it, instead, later sell the property and apply the proceeds to a reduction of the acquisition cost? Would an agreement to do so, in consideration of the construction of the project by the Federal Government and the execution of the lease, be enforceable?

“(b) Could the school township lease the abandoned schoolhouse (remodelling to be done by the tenant) or the site thereof, and pursuant to an agreement with the Federal Government apply the proceeds to the reduction of the acquisition cost, or to the payment of rental?

“(c) Could the school township immediately convey such property to the Federal Government, in considera-

tion of the construction of the project and the execution of the lease, which of course would contain a reduced acquisition cost and lower factor for calculating rent?

"3. In the event such a lease were entered into, could the school township include the rental among its operating costs, so that if there were a deficit in meeting all operating costs, including rental, it could qualify for state aid which, of course, in effect would be devoted to payment of rent?"

The applicable statute which furnishes the procedure for the sale of school property is Section 28-3317 of Burns' Indiana Statutes Annotated 1933. I am omitting from consideration Section 28-3316 of Burns' Indiana Statutes Annotated 1933, owing to the fact that Section 28-3317, *supra*, is a later Act and insofar as it furnished the procedure for sale, I think it supersedes Section 28-3316. It will be noted from a reading of Section 28-3317, *supra*, that school properties which are not used or occupied for school purposes, or are unnecessary by reason of the construction of other schoolhouses may be sold by a township trustee upon petition signed by two-thirds of the qualified voters of the school district wherein the property is situated. There may be some doubt as to whether the conditions precedent to a sale under this statute are supplied by the construction of another building by someone other than the township, the use of which is acquired by the township only by a rental agreement. However, even so, before the building could be sold there would have to be supplied a petition signed by two-thirds of the qualified voters of the school district wherein the school is located, except in a case of non-use for a period of two years, in which case the approval of the township advisory board is all that is necessary.

Your question 2(a) inquires as to the use which may be made of the selling price of the building, assuming that it must be sold. The statute provides that the sale price of such property is to go into the Special School Revenue Fund, which is a fund which is available for the construction, renting, or repairing of schoolhouses, providing furniture, school apparatus, fuel, and for the payment of other necessary expenses of the school, including tuition and teachers' salaries whenever, in any current year, the tuition funds have been exhausted. (Burns' Indiana Statutes Annotated, 1933, Secs. 28-3316, 28-3317 and 28-1101.)

I think your question 2(b) should be answered in the nega-

tive. Likewise, your question 2(c) should be answered in the negative. The authority to sell is an authority to sell for cash unless otherwise specifically provided after following the procedure outlined in Section 28-3317, *supra*.

Caldwell v. Bauer, 179 Ind. 146 at p. 168.

Your question 2(a) does not admit of a categorical answer. While the funds derived from the sale of a school building are available for the construction, renting or repairing of school-houses, I do not think they would be available as a contribution to the construction of a building by someone else upon ground not owned by the school corporation. The proposed contract, if valid at all, is upon the basis of its being a lease rather than a sale. Such funds, however, would, I think, be available to pay rent.

Your question No. 3, I think, should be answered in the negative for all practical purposes. The School Relief Law in referring to "current operating expenses" seems to contemplate transportation contracts, transfers, fuel, janitor services, institute fees, supplies, reference books, equipment and repairs on buildings, making no reference to rentals. Moreover, even the item of repairs is limited not to exceed \$50.00 for any one schoolroom in any one year. (Burns' Indiana Statutes Annotated, 1933, Sec. 28-903.)

My conclusion in general is that a lease such as has been described by you could be legally made, the details to be considered and passed upon after the instrument has been completed. However, such a lease, being for only one year with the right in the township to renew, would carry with it no obligation involving indebtedness for more than one year's rental at a time, and there might be practical difficulties in liquidating the cost of the building. That matter will have to be determined on the basis of conditions which are not available to me.