

July 1, 1999

Representative Roger W. Chase
District 33, Bannock County
4985 Clearview Avenue
Pocatello, ID 83201

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Representative Chase:

You have asked the Attorney General's Office to provide legal guidance regarding the propriety of a real property transaction between the Bannock County School District and the Katsilometes family. Specifically, you have asked us to examine the provisions of the School Property Act ("Act"), Idaho Code §§ 33-601 to 33-603, and examine what the Act requires when a school district wishes to purchase or convey real property. You asked (1) whether a school district must give public notice of the real property it wished to purchase, and once it gave such notice whether the district was obligated to purchase that parcel of land without any alteration of land boundaries; and (2) whether a school district, once it has an ownership interest in real property, can convey real property without receiving consideration or other value for the land and without public notice or an appraisal?

Concerning the other questions that you submitted to our office for review, they appear to be factual in nature, and do not involve legal issues relating to the School Property Act. For that reason, our office respectfully declines to answer those factual issues, and limits its response to the legal issues outlined above.

ANALYSIS

- 1. Once a school district gives public notice of real property it wishes to purchase, is it statutorily obligated to purchase the parcel of land without alteration to the parcel's boundaries?**

Idaho Code § 33-601 regulates the acquisition, use or disposal of real and personal property by a school district. The statute empowers the board of trustees of each school district to "contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district." Idaho Code § 33-601(2). However, the board of trustees shall not enter into any contract "which entails the expenditure of Fifteen Thousand Dollars (\$15,000) or more without notice first being given by publishing twice in the manner required by subsections (g) and (h) of Section 33-402, Idaho Code.

. . . The board of trustees may let the contract to the lowest responsible bidder, or reject any bid, or reject all bids and publish notice for bids as before.” Idaho Code § 33-601(2).

Thus, it appears clear from the statute that the board of trustees may enter into contracts for the construction, repair or improvement of real property,¹ or the acquisition of equipment or other personal property necessary for the school district’s operation. However, it is important to note that the public notice requirements of Idaho Code § 33-601(2) appear to apply only when the board of trustees is contracting for the construction, repair, or improvement of real property, not the purchase or conveyance of real property. Accordingly, it does not appear that the board of trustees is required to give public notice of any land purchase, even if the purchase price is greater than \$15,000.

It appears that the section of the statute applicable to the purchase of real property is subsection (3) of Idaho Code § 33-601. The statute provides that the board of trustees may:

designate and purchase any real property necessary for school purposes or in the operation of the district, the provisions of subsection (2) of this section notwithstanding, or remove any building, or dispose of any real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interest of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its findings, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Idaho Code § 33-601(3) (emphasis added).

It appears from subsection (3) that the board of trustees may designate and purchase any parcel of land necessary for school purposes, notwithstanding the notice requirements of subsection (2) discussed above. Accordingly, when determining whether to purchase land, the statute appears to exempt the board of trustees from the public notice and election provisions of subsection (2). It follows, therefore, that the board of trustees, even if they gave the public notice of the boundaries of the designated parcel of land, could change the designated parcel to any parcel of its choosing, because the public notice provisions are not applicable in the first instance.

- 2. Once a school district has an ownership interest in land, can it convey the land without receiving consideration, without public notice of the conveyance, and without an appraisal?**

Your second question did not concern the purchase of real property, but, rather, a conveyance or transfer of real property. It would thus appear that Idaho Code § 33-601(4) governs such a transaction. That code section provides that the board of trustees may:

convey, except as provided by (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. . . . Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. . . . Notice of the time and the commissions of such sale shall be published twice, and proof thereof made, in accordance with subsections (g) and (h) of Section 33-402, Idaho Code, except that when the appraised value of the property is less than Five Hundred Dollars (\$500), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees may have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

Idaho Code § 33-601(4)(a).

It appears that the board of trustees may only sell land in which it has an ownership interest pursuant to the provisions of Idaho Code § 33-601(4)(a). The statute requires that the board of trustees must, prior to a sale or transfer of property, have the property appraised by three disinterested residents, and then determine whether to sell the property to the highest bidder. The board of trustees would also have to give public notice of the sale and the terms of the sale. If the real property was donated to the school district, the board has a period of one year from the time the appraisals were done to sell the property without any additional advertising or bidding. The board may not in any event sell the real property for less than its appraised value.

However, the statute does not appear to require the board of trustees to actually conduct a sale of the property. Arguably, the board could convey or exchange the property in another manner pursuant to Idaho Code § 33-601(4)(b). That subsection authorizes the board of trustees to exchange real property:

for other property if the consideration received by said school district shall be deemed adequate by the board of trustees, provided, however, that aside from the provisions of this paragraph hereof, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made.

Idaho Code § 33-601(4)(b).

According to subsection (4)(b) of Idaho Code § 33-601, the school district may exchange land for other property or consideration, and does not have to sell property it owns. An exchange may be undertaken as long as the board of trustees deems the consideration received to be adequate. It would appear from this statute that the board of trustees may only exchange land without receiving any consideration or value in return when it is conveying real property to any of the listed governmental entities in Idaho Code § 33-601(4)(b).

CONCLUSION

It is the conclusion of this office that the only way a school district may convey or transfer real property in which it holds an ownership interest is by following the provisions of Idaho Code § 33-601(4). If the board of trustees wished to sell the property, Idaho Code § 33-601(4)(a) would require the board to (1) have the property appraised by three disinterested residents; (2) determine whether to sell the land at public auction or via sealed bids; (3) and determine whether to sell to the highest bidder. The date of any such sale and the terms of a sale must be published. The board is prohibited from selling real property it owns for less than its appraised value. If the board of trustees wanted to exchange property in a transaction with a private citizen as opposed to a statutorily designated governmental entity, pursuant to Idaho Code § 33-601(4)(b) the board must receive value for the land exchanged and make a determination that the value received was adequate.

If the district desired to purchase land, it appears that the board of trustees is exempt from the public notice provisions of Idaho Code § 33-601(2) and could purchase any parcel of land it designated as necessary for school purposes. Idaho Code § 33-601(3). It does not appear that there are any sanctions or other remedies provided for a violation of Idaho Code § 33-601.

Sincerely,

KIRSTEN L. WALLACE
Deputy Attorney General

¹ Real property refers to real estate or land, whereas personal property can refer to anything other than land.