



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-136

January 5, 2015

The Honorable Jim Dotson
State Representative
Post Office Box 651
Bentonville, Arkansas 72712-0651

Dear Mr. Dotson:

I am writing in response to your request for my opinion on the following questions:

1. Can a school district purchase real property in another school district?
2. If so, can the school district that purchased the real property build a school on that property for use by students in its district?

As noted in your request, one of my predecessors addressed identical questions in Op. Att’y Gen. 2001-098, answering both in the affirmative, subject to certain qualifications. You are concerned to know, however, whether the answers offered by my predecessor “have changed based on current law” adopted in the wake of the Arkansas Supreme Court’s decision in *Lake View School District v. Huckabee*.¹

¹ 351 Ark. 31, 91 S.W.3d 472 (2002) (declaring unlawful under the Arkansas Constitution’s educational article, Ark. Const. art. 14, § 1, and its equal protection provisions, Ark. Const. art. 2, §§ 2, 3 and 18, the state’s system of primary and secondary education).

RESPONSE

In my opinion, the pertinent law is materially unchanged, meaning that the answer to each of your questions remains “yes,” subject to what you accurately characterize as my predecessor’s “caveats.”

I need not here reproduce my predecessor’s analysis, which remains materially accurate. Although the statutes recited by my predecessor have been amended since 2001,² none of these amendments warrants changing my predecessor’s basic conclusions.

The *Lake View* decision, which declared unconstitutional the state’s system of public education, has prompted legislation that provides for state oversight regarding the location and construction of academic facilities. Issues regarding proposed construction and transportation now fall under the jurisdiction of the Department of Education’s Division of Public School Academic Facilities and Transportation.³ Assisting this body in an advisory capacity is the Academic Facilities Oversight Committee, which is statutorily mandated to do the following:

(a)(1) Oversee development and implementation of state statutory requirements with regard to providing constitutionally appropriate

² Indeed, A.C.A. § 6-20-1406, which my predecessor recited in support of the proposition that the State Board of Education must approve new school construction, was repealed by Acts 2007, No. 989, § 1. This requirement remains, however, pursuant to A.C.A. § 6-20-1407, which my predecessor also recited as support.

³ See A.C.A. §§ 6-21-112 (Repl. 2013) (creating the Division) and 6-13-131 (Repl. 2013) (placing the Division under the Department of Education). With respect to the construction of public-school facilities, A.C.A. § 6-20-1407(b) (Repl. 2013) provides as follows:

No public school facility shall be built, added to, or renovated except in accordance with the plan finally approved by the Commission for Arkansas Public School Academic Facilities and Transportation for all projects in which the commission requires its approval.

Subsection (c) of this statute provides:

A copy of approved plans and specifications of all new public school facilities, additions, or renovations shall be filed with and approved by the commission before construction shall be commenced.

In the wake of the Division’s creation, the Minimum Schoolhouse Construction Standards referenced in my predecessor’s opinion are no longer in effect.

public school academic facilities and related equipment for all public schools in the State of Arkansas as necessary to provide an equal opportunity for an adequate education for all public school students in Arkansas⁴;

(2) Appoint members of the Advisory Committee on Public School Academic Facilities established to assist the Division of Public School Academic Facilities and Transportation;

(3) Review and recommend policies and criteria for the repair, maintenance, renovation, remodeling, replacement, and construction of public school academic facilities;

(4) Oversee local and state expenditures related to providing constitutionally appropriate public school academic facilities and related equipment; . . . and

(7) Use the opinions of the Supreme Court in the matter of *Lake View School District No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002) and other legal precedent relevant to public school academic facilities.

* * *

(b)(3) When feasible, the Academic Facilities Oversight Committee shall propose plans, measures, and initiatives as recommendations for legislation or regulation.⁵

⁴ Cf. A.C.A. § 6-13-620 (Repl. 2013), which was amended as follows pursuant to Acts 2009, No. 1180, § 2:

The board of directors of each school district in the state ~~shall be~~ is charged with the following powers and required to perform the following duties in order to provide no less than a general, suitable, and efficient system of free public schools: . . .

The effect of this amendment, which echoes the constitutional guarantee set forth at Ark. Const. art. 14, is largely rhetorical. The legislature's clear need to stress its commitment to ensure "a general, suitable, and efficient system of free public schools" was quite likely prompted by the Arkansas Supreme Court's focus on this obligation in *Lake View*.

⁵ A.C.A. § 10-3-2202 (Repl. 2012).

In my opinion, subject to the oversight outlined above, school boards continue to operate within the bounds of the discretion referenced in my predecessor's 2001 opinion. A school-district board's ability to purchase property outside the district and to build facilities thereon remains subject to both this discretion, the exercise of which is monitored by applicable regulations. I am unaware of any blanket proscription issued by the Division or any other entity that would foreclose a school district from purchasing property and constructing a school in another district.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin McDaniel", with a large, stylized flourish at the end.

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh