



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

March 2, 1993

FILE NO. 93-004

SCHOOL & SCHOOL DISTRICTS:
Authority of Regional Board
of School Trustees to Dispose
of Property

Honorable David R. Akemann
State's Attorney, Kane County
719 South Batavia Avenue
Geneva, Illinois 60134

Dear Mr. Akemann:

I have your predecessor's letter wherein he inquired whether a regional board of school trustees possesses the authority to sell real estate which has been conveyed to it for general school purposes, and not on behalf of any specific school district. For the reasons hereinafter stated, it is my opinion that a regional board of school trustees lacks the statutory authority necessary to sell property which has been conveyed to it directly for general school purposes.

Honorable David R. Akemann -2.

Articles 6 and 7 of the School Code (Ill. Rev. Stat. 1991, ch. 122, pars. 6-1 et seq. and 7-01 et seq.; 105 ILCS 5/6-1 et seq. and 7-01 et seq. (West 1992)) govern the establishment and duties of regional boards of school trustees. As provided by statute, a regional board of school trustees is a seven member administrative agency created primarily to review petitions for reorganization and to determine whether school district boundaries should be changed by detachment, annexation, division or dissolution. (Ill. Rev. Stat. 1991, ch. 122, par. 6-2, as amended by Public Act 87-969, effective August 28, 1992; 105 ILCS 5/6-2 (West 1992); Ill. Rev. Stat. 1991, ch. 122, par. 7-1, as amended by Public Act 87-1080, effective September 15, 1992; 105 ILCS 5/7-1 (West 1992)). Each such board has been designated as a "body corporate and politic". (Ill. Rev. Stat. 1991, ch. 122, par. 6-2, as amended by Public Act 87-969, effective August 28, 1992; 105 ILCS 5/6-2 (West 1992).) As such, each has the status of a public corporation. 1979 Ill. Att'y. Gen. Op. 56; 1982 Ill. Att'y Gen. Op. 18, 19.

It is well established that public corporations possess only those powers which have been expressly granted to them by the Constitution or by statute, together with those powers which arise by necessary implication therefrom. (People v. Barrett (1943), 382 Ill. 321, 340-45; Latham v. Board of Education of the City of Chicago (1964), 31 Ill. 2d 178, 186-87; Evans v. Benjamin School District No. 25 (1985), 134

Honorable David R. Akemann -3.

Ill. App. 3d 875, appeal denied.) In this regard, section 7-28 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 7-28; 105 ILCS 5/7-28 (West 1992)) provides, in pertinent part:

"* * *The regional board of school trustees in Class I county school units shall be invested in their corporate capacity with the title of all school buildings and school sites, and in addition the regional board of school trustees in a Class II county school unit shall be so invested with the title of all school buildings and school sites used and occupied for school purposes by the school board of a school district which is located in that Class II county school unit but which no longer is subject to the jurisdiction and authority of a township treasurer or trustees of schools of a township because the district has withdrawn from the jurisdiction and authority of the township treasurer and trustees of schools of the township or because those offices have been abolished as provided in subsection (b) or (c) of Section 5-1. They may receive any gift, grant, donation or legacy made for the use of any school or for any school purpose within their jurisdiction and shall succeed to any gift, grant, donation or legacy heretofore received by the township school trustees within their jurisdiction for the use of any school or for any school purpose within such jurisdiction. All conveyances of real estate made to the regional board of school trustees shall be made to them in their corporate name and to their successors in office; and school districts and high school districts may take and convey title to real estate to be improved by buildings or other structures for vocational or other educational training as provided in Section 10-23.3." (Emphasis added.)

All county school units containing less than 2,000,000 inhabitants are classified as Class I units. (Ill. Rev. Stat. 1991, ch. 122, par. 5-1; 105 ILCS 5/5-1 (West 1992).)

Honorable David R. Akemann -4.

Under the language quoted above, regional boards of school trustees, with limited exceptions, have been designated to hold title to all school facilities within their jurisdiction. Moreover, pursuant to the language of section 7-28, the General Assembly has expressly authorized regional boards of school trustees to receive donations and gifts of property either specifically for the use of particular school districts, or generally for school purposes.

While section 7-28 of the Code expressly grants a regional board of school trustees the authority to accept conveyances of real property, nothing in the language thereof either expressly or impliedly authorizes a regional board of school trustees to convey, sell or dispose of property that it has accepted. In this regard, for property which has been devised for the benefit of a specific school district, section 5-22 of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 5-22, as amended by Public Act 87-984, effective January 1, 1993; 105 ILCS 5/5-22 (West 1992)) and section 2 of the Local Government Property Transfer Act (Ill. Rev. Stat. 1991, ch. 30, par. 157; 50 ILCS 605/2 (West 1992)) authorize the transfer or conveyance of property by the regional board of school trustees upon a finding by the school district's board that a particular parcel of property is no longer necessary for the uses of the district. Neither the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 1-1 et seq.; 105 ILCS 5/1-1 et seq. (West 1992)) nor

the Local Government Property Transfer Act (Ill. Rev. Stat. 1991, ch. 30, par. 155h et seq.; 50 ILCS 605/0.01 et seq. (West 1992)), however, contains any other statutory provision which provides a regional board of school trustees with authority to convey or transfer property which has been donated to it generally for school purposes and not for the benefit of a particular school district. Absent such a grant of authority, it is my opinion that a regional board of school trustees may not dispose of property which has been conveyed to it generally for school purposes.

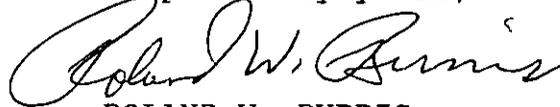
This conclusion is consistent with that reached in opinion No. F-1481 (1965 Ill. Att'y Gen. Op. 193), wherein Attorney General Clark concluded that a county board of school trustees (the precursor to the regional board of school trustees (see, Ill. Rev. Stat. 1991, ch. 122, par. 7-01; 105 ILCS 5/7-01 (West 1992))) lacked the authority to enter into a 99-year lease with a park district for the purpose of permitting the park district to build a swimming pool on school property, even though the board of trustees held title to the realty. In reaching this conclusion, my predecessor noted that in the absence of an express statutory provision empowering the board of trustees to enter into such an agreement, the board could not lease property to anyone for any purpose or for any length of time, even though it held title to the property by

Honorable David R. Akemann -6.

virtue of section 7-28 of the School Code (Ill. Rev. Stat. 1963, ch. 122, par. 7-28). The principles set forth in opinion F-1481 would also govern the disposition of this inquiry.

Consequently, it is my opinion that a regional board of school trustees lacks the authority to dispose of real property which has been conveyed to it generally for school purposes. A board may dispose of real property which it has received for the benefit of a specific school district in accordance with the provisions of the Local Government Property Transfer Act.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is positioned above the typed name and title.

ROLAND W. BURRIS
ATTORNEY GENERAL