

OP. NO. 03-120

EDUCATION: SCHOOL PROPERTY — GENERAL POWERS AND DUTIES OF SCHOOL BOARDS.

Authority for Loudoun County School Board to lease 1883 schoolhouse and adjacent brick building to Loudoun Museum Inc., if leased property is used for benefit of school district and nominal lease is consistent with good business judgment and sound business principles. Question of whether nominal lease benefits school district and is consistent with good business judgment and sound business principles is question of fact to be resolved by School Board.

The Honorable William C. Mims
Member, Senate of Virginia
January 22, 2004

Issue Presented

You ask whether the Loudoun County School Board has the authority to lease to the Loudoun Museum, Inc., real property owned by the School Board.

Response

It is my opinion that the Loudoun County School Board may lease the 1883 schoolhouse and adjacent brick building to the Loudoun Museum Inc., if the leased property is used for the benefit of the school district and the nominal lease is consistent with good business judgment and sound business principles. It is further my opinion that the question of whether the nominal lease benefits the school district and is consistent with good business judgment and sound business principles is a question of fact to be resolved by the Loudoun County School Board.

Background

The Loudoun Museum, Inc., is a federal tax-exempt corporation.¹ The Museum's mission is to (1) collect and care for materials that illustrate the history of Loudoun County and its residents; (2) interpret the history of Loudoun County through permanent and changing exhibitions; (3) educate the public concerning the county's history through programs, resource materials, and events; and (4) foster heritage tourism. The Museum has a history of supporting the county's public school system.

The Loudoun County School Board owns a deteriorating frame structure that was first used as a public school in 1883 and is now being used for storage ("1883 schoolhouse"). The School Board also owns an adjoining brick building. The Loudoun Museum has proposed to lease the property owned by the School Board on a long-term basis and for a nominal amount. The Museum intends to (1) maintain both buildings; (2) invest approximately \$500,000 of its own money for renovation of the buildings; (3) restore and operate the 1883 schoolhouse as a historic site and offer educational programs related to its historical importance;

(4) create additional classroom and meeting space, conserve and store its collections, and house its administrative offices in the adjoining brick building; and (5) waive the fees of Loudoun County visiting student classes.

Applicable Law and Discussion

Section 22.1-129(B) authorizes a school board to lease property it owns.² Although no statute limits a school board's authority as to the term of a lease, prior opinions of this Office have concluded that a school board has authority to enter into a long-term lease.³

A 1979 opinion has determined that a transfer for nominal consideration is tantamount to a gift, unless it is for the benefit of the school district and consistent with good business judgment and sound business principles.⁴ You relate that, because the leased property will be used for educational programs, a benefit to the school district may be inferred. Further, you relate that (1) the facilities will be used for educational purposes; (2) the lessee will expend substantial funds to renovate the frame building; (3) no public funding is contemplated; and (4) the county public schools will have continued enjoyment of the facilities, at no cost, and in a useable condition when the lease expires. Such facts would indicate that the proposed nominal lease arrangement meets the "good business judgment and sound business principles" test.⁵ Whether the proposed nominal lease is for the benefit of the school district and consistent with good business judgment and sound business principles, however, is a question of fact. For many years, Attorneys General have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law.⁶ In this instance, the question of fact must be resolved by the Loudoun County School Board.

Conclusion

Accordingly, it is my opinion that the Loudoun County School Board may lease the 1883 schoolhouse and adjacent brick building to the Loudoun Museum Inc., if the leased property is used for the benefit of the school district and the nominal lease is consistent with good business judgment and sound business principles. It is further my opinion that the question of whether the nominal lease benefits the school district and is consistent with good business judgment and sound business principles is a question of fact to be resolved by the Loudoun County School Board.

¹See I.R.C. § 501(c)(3) (West 2002) (exempting from taxation "[c]orporations ... organized and operated exclusively for ... educational purposes").

²"A school board shall have the power ... to lease real and personal property either as lessor or lessee" Va. Code Ann. § 22.1-129(B) (LexisNexis Repl. Vol. 2003).

³Op. Va. Att'y Gen.: 1998 at 74; 1987-1988 at 339, 339; 1985-1986 at 157.

⁴1978-1979 Op. Va. Att'y Gen. 228, 228.

⁵Prior opinions of the Attorney General have concluded that the transfer for nominal consideration or disposal of school property must be consistent with, among other things, good business judgment and sound business principles. See Op. Va. Att'y Gen.: 1987-1988 at 340, 341; 1978-1979, *supra* note 4, at 228; 1973-1974 at 312, 312; 1970-1971 at 340, 340; 1963-1964 at 268, 269;

⁶2003 Op. Va. Att'y Gen. No. 03-048 (Oct. 31, 2003), and opinions cited in note 17, available at <http://www.vaag.com/media%20center/Opinions/2003opns/03-048w.htm>.

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