

EDUCATION-SCHOOL PROPERTY-LEASES: Where education district will use ninety percent of property for educational programs and leases for remaining ten percent are for commercial uses that do not interfere with educational programs, existing leases do not disqualify the purchase of the property by the district. Under these facts, purchasing the property subject to existing leases is a purchase for a valid public purpose if the education district board determines lease terms are in the best interests of the district. Minn. Stat. § 123B.51.

(correcting citations in Op. Atty Gen. 622a6; cr. 161B-11(Oct. 25, 2023))

622a6; cr 161b-11



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November 13, 2023

Christian R. Shafer
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444 Cedar Street, Suite 2100
St. Paul, MN 55101

Re: Request for Opinion

Dear Mr. Shafer:

Thank you for your letter of September 21, 2023, which requests an opinion from this Office on whether an education district may purchase a property subject to private commercial leases. You represent the Hiawatha Valley Education District (HVED), an education district created under Minn. Stat. § 123A.15, and request this opinion pursuant to Minn. Stat. § 8.07.

BACKGROUND

The facts as you present them are that HVED is comprised of twelve-member school districts and two charter schools. HVED provides special education, out-of-school placement options, alternative education programs, and other education-related programs and services to children, particularly children with disabilities.

HVED currently houses its operations at five sites and seeks to consolidate its facilities. The district is in discussion with a mall property at a central location that would be substantially renovated to meet the district's needs. Your letter indicates the mall has sufficient space (approximately 83,000 square feet) and flexibility for current programming and anticipated future expansion opportunities. Having all HVED staff at one location will enhance the safety and security of students given the increased total number of staff near a student at any given time.

HVED will be using at least ninety percent of the property under consideration to house its educational programs. The remaining ten percent of the property is subject to commercial tenant leases of varying duration and terms. At least one lease extends to 2032 but allows either the

tenant or landlord to terminate for any reason based on six-months' notice. The HVED Board of Directors is prepared to adopt a resolution stating the areas of the mall occupied by tenants are not currently needed for school purposes, and tenant operations will not interfere with the district's educational programs. The resolution will also state that the Board may renew a lease only if the lease and tenant occupancy does not interfere with HVED educational programs and the space is not necessary for the same.

QUESTIONS PRESENTED

1. Is an education district authorized to purchase a mall property subject to private tenant leases if the primary purpose of the purchase is to house educational programs, and if the leased spaces are not necessary for, and the lease does not interfere with, the educational programs taking place on the mall property?
2. Would the purchase of a property subject to existing leases qualify as a purchase for a valid public purpose?

SUMMARY OF CONCLUSION

Where the education district will use ninety percent of the purchased property for its current and anticipated educational programs and leases for the remaining ten percent are for commercial operations that do not interfere with district educational programs, the existing leases do not disqualify the purchase of the property. Under these facts, purchasing the property subject to existing commercial leases is a purchase for a valid public purpose if the terms of the leases are determined to be in the best interests of the district.

ANALYSIS

Authority to Purchase Property Subject to Leases. Your letter acknowledges that school boards are statutorily authorized to purchase property and lease out property, but it is not readily apparent whether school districts can purchase property subject to an existing lease. You argue that such authority can be implied based on various principles of statutory construction.

First, however, as you note the board of an education district formed under section 123A.15 is governed by laws applicable to independent school districts unless specifically provided otherwise. Minn. Stat. § 123A.17, subd. 4. General powers of independent school districts include both specific powers granted by the Legislature and implied powers. Minn. Stat. § 123B.02, subd. 1.

School boards of independent school districts are authorized to purchase property necessary for school purposes. Minn. Stat. § 123B.51, subd. 1. Recognizing that there may not be an exact match of purchased and necessary space, the Legislature also authorized school districts to:

lease to any person, business, or organization real property that is not needed for school purposes . . . if the board determines that leasing part of the property does not interfere with the educational programs taking place on the property. The board may charge and collect reasonable consideration for the lease and may determine the terms and conditions of the lease.

Minn. Stat. § 123B.51, subd. 4(a).¹ We are not aware of any specific provision of law otherwise providing for real property purchases or leases by education districts, so conclude that Minn. Stat. § 123B.51 applies to HVED as an education district. *See* Minn. Stat. § 123A.17, subd. 4 (education district governed by laws applicable to independent districts unless specifically provided otherwise).

You argue that the power to purchase real property subject to a lease must be implied to give effect to both the purchase authority and lease out authority of section 123B.51, and to conclude otherwise would lead to an absurd result. *See* Minn. Stat. § 645.17(1) and (2).

We agree that the authority to purchase subject to an existing lease may be fairly implied from subdivisions 1 and 4 of Minn. Stat. § 123B.51 The Legislature clearly authorizes a purchase of property by a school district and separately authorizes the district to lease to a business. The power to purchase subject to a lease is fairly implied from those two express authorizations. *Cf. In re Hubbard*, 778 N.W.2d 313, 321 (Minn. 2010) (holding that while court is reluctant to find implied statutory authority of an administrative agency, agency’s authority need not be given a “cramped reading” and enlargement of powers by implication must be “fairly drawn and fairly evident from the agency’s objectives and powers expressly given by the legislature.” *quoting In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987) and *Peoples Natural Gas v. Minn. Pub. Utils. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985)); *Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984) (implied powers of municipality must be in aid of those powers expressly conferred). Consistent with a finding of implied authority here, we previously determined that a school district could take title to property subject to a reversionary interest in favor of a prior grantee. *Op. Atty. Gen.* 469-a-15 (Nov. 20, 1969).

To effectuate the legislative intent in subdivision 4 that the board “may determine terms and conditions of the lease,” the school district must examine the terms of the existing leases to ensure not only the absence of a conflict with the district’s educational uses of the building, but that the terms of the leases are reasonable and that assuming them is in the district’s best interests. *See Op. Atty. Gen.* 622a6 (Sept. 25, 1946) (in opinion predating section 123B.51, holding school district may lease property to private corporation upon such terms as board reasonably deems to be for the best interests of the school district). This should be part of the district’s due diligence in examining any encumbrance on title before the purchase. After the purchase, in addition to not renewing any lease if the space is needed for educational purposes, HVED should also be prepared

¹ A previous version of this statute allowed leases out only to “persons or organizations.” Minn. Stat. § 123.36, subd. 10(a)(1988). A 1990 amendment added “business” to the list of permissible lessees. 1990 Minn. Laws ch. 562, art. 8, § 23.

to exercise rights of termination in the existing leases if doing so is in the best interest of the district.

Public Purpose. You also ask us to opine whether the described purchase would qualify as one for a valid public purpose. The Minnesota Supreme Court has construed “public purpose” to mean “such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government.” *City of Pipestone v. Madsen*, 178 N.W.2d 594, 599 (1970). As noted in your letter, the applicable caselaw holds that an “incidental” private benefit does not disqualify a transaction as being fundamentally for a valid public purpose. *See Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958). We agree that the benefit accruing to private commercial lessees who occupy approximately ten percent of school property that is not necessary to the district does not necessarily negate the public purpose.

This office analyzed the public purpose question in an opinion regarding whether a municipal liquor store could extend credit to business customers. Op. Atty. Gen 218-R (Sept. 26, 1978). That was a somewhat analogous situation in that the authority to extend credit was not express in statute. After determining that this authority could be fairly implied from the authority to operate the liquor store, we concluded that credit liquor sales could serve a public purpose because the Legislature had determined that operation of municipal liquor stores serves the public good. However, our opinion cautioned that business practices must comply fully with applicable statutes, and credit could not be extended indiscriminately.

Similarly, the Legislature has determined that leasing out property not needed by school districts is a valid function of a district and serves the public good. *See* Minn. Stat. § 123B.51, subd. 4. Also similar to the extension of credit, leases must not be entered into indiscriminately, however. The terms of each lease must be evaluated carefully to ensure the terms (including duration, rent, allocation of risk, nature of the lessee’s use of the property, etc.) are in the district’s best interests. Only if that is the case will the leases “serve as a benefit to the community.” *Madsen*, 178 N.W.2d at 599. That question is for the district to decide.

Thank you again for your inquiry, and we hope this opinion is helpful to you.

Sincerely,



KEITH ELLISON
Attorney General

Encl: Op. Atty. Gen. 469-a-15 (Nov. 20, 1969)
Op. Atty. Gen. 622a6 (Sept. 25, 1946)
Op. Atty. Gen. 218R (Sept. 26, 1978)