Minutes

USD #112 Board of Education met Tuesday evening, Aug. 25, 2020, for a special meeting, beginning at 6:00 p.m. at Central Plains Elementary School Cafeteria in Holyrood, KS with the following attending:

Board Members:

Jacob Charvat (via phone)
Chad Rogers
Tony Zink
Brad Schiermeyer
Tami Schepmann
Tamara Dody
Joshua Hurley

Also attending were Greg Clark, Superintendent, Diane Ney, Board Clerk, Jane Oeser, Central Plains Elementary School Principal, Adam Niedens, Wilson Schools Principal, Scott Mitchum for livestreaming, John Sherman, from *Sherman Hoffman and Hoffman, LC,* and the attached list of guests and patrons.

On motion by Chad Rogers and seconded by Josh Hurley, the board voted 7-0 to approve the agenda.

Mr. Clark explained the Kansas Schools Gating Criteria, which is a Kansas guide to learning and school safety operations regarding COVID-19. It includes four different learning options including on-site, on-site and hybrid, hybrid and remote, and remote only.

John Sherman addressed the board regarding the Bushton building and moving the Holyrood HVAC system to the Bushton building. He stated, via the attorney general's opinion, that the board can pay to move the heating and air back to Holyrood in order to improve the building to sell. He addressed various topics including the lease-purchase agreement, use of capital outlay funds to move the equipment, process for a sale of the building and the sealed bids process. (see attached letter)

The board discussed the cost to re-install the Holyrood HVAC system in the Bushton building as opposed to relocating the system without installation.

John Sherman also addressed the board on selling the property at Bushton at the board's discretion. He stated a resolution must be adopted for the sale.

The board discussed selling the building as is, without the heating and air conditioning installed, and to seek public interest in the building. The board also discussed what items would be included in the sale of the property.

Don Redding and Rusty Redding addressed the board regarding their interest to purchase the building, based on the stipulation that the heating and air conditioning would be installed. They would not be interested in purchasing the building without the heating and air installation.

Alan Siemer, representing the City of Bushton, stated the city's interest in the building, based on the stipulations of what would be included in the sale.

Tami Schepmann made a motion, which was seconded by Tony Zink, that the superintendent and board attorney prepare an advertisement to seek sealed bids for sale of the Bushton School Building, with bids to be submitted to the district office, 600 S. Main St., Holyrood, KS by 1:00 p.m. on Friday, September 11, 2020. The bids to be opened at 1:30 PM and all bidders being welcome to attend. The advertisement shall provide that the sale is made by Quit Claim Deed, "as is" and "where is" and that the district will retain ownership of such personal property as the administration determines should be retained. The district also reserving the right to retain and move the football bleachers and any property subject to a lease purchase agreement will be retained by the district. The advertisement shall specify that the district reserves the right to reject all bids.

At this time, Chad Rogers suggested that the bids be opened at the school board meeting Monday evening, Sept. 14, 2020. The board further discussed the location of opening the bids and who would be present. The board also discussed the advertisement to sell the building would be published in the Great Bend Tribune, the Ellsworth Independent Reporter and the newspaper at Lyons, KS.

On motion by Josh Hurley and seconded by Chad Rogers, the board voted 7-0 to approve an amendment to the previous motion to change the bid opening location to the law offices of Sherman, Hoffman and Hoffman.

On motion by Tami Schepmann and seconded by Tony Zink, the board voted 7-0 to approve the amended motion that the superintendent and board attorney prepare an advertisement to seek sealed bids for sale of the Bushton School Building, with bids to be submitted to the office of Sherman, Hoffman & Hoffman at 126 N. Douglas Ave., PO Box 83, Ellsworth, KS 67439 by 1 PM

Friday, September 11, 2020. The bids to be opened at Sherman, Hoffman & Hoffman at 1:30 PM and all bidders being welcome to attend. The advertisement shall provide that the sale is made by Quit Claim Deed, "as is" and "where is" and that the district will retain ownership of such personal property as the administration determines should be retained. The district also reserving the right to retain and move the football bleachers and any property subject to a lease purchase agreement will be retained by the district. The advertisement shall specify that the district reserves the right to reject all bids.

On motion by Chad Rogers and seconded by Josh Hurley, the board voted 7-0 to adjourn the meeting at 7:30 p.m.

Clerk

President

WAIVER OF NOTICE OF SPECIAL BOARD MEETING

USD #112

We the undersigned Board members hereby waive the written, required under the provisions of K.S.A. 72-8205, of this special board meeting, as to the time, place and purpose of a special meeting of the Board of Education of Unified School District No. 112, Ellsworth County, Kansas, held on the **25th** day of **August**, **2020** beginning at **6:00 p.m.** in **Holyrood, KS** and Consent to the transaction of the following Board business at said meeting:

Discussion and possible action on the following:

- Gating Criteria - report
- Bushton Building – HVAC system and selling/bid process

Dated: 8-25-20

USD #112 Board of Education
Aug. 25, 2020 – Special Board Meeting
Guest Registration

PLEASE PRINT:

Name

PLEASE PRINT:

Name

Alan Rusch
Turner Redding
Rusty Redding
Don Redding
Davis Jimenez
Alan Siemer

LAW OFFICES
SHERMAN, HOFFMAN & HOFFMAN, LC
126 North Douglas
Mailing Address: P. O. Box 83
Ellsworth, Kansas 67439-0083

John Sherman
Gregory R. Hoffman
Patrick G. Hoffman
Melissa K. Miller

TELEPHONE: 785-472-3186
FAX 785-472-4767

August 23, 2020

To: USD No. 112 Board of Education
Via Email

RE: Opinions Requested - Bushton Building and Fixtures
Our File No. 8300

Dear Board Members:

You have requested that I provide opinions and information about the following:

1. Can the lease purchase fixtures installed at Bushton be removed while keeping the Lease Purchase Agreement with Wilson State Bank in effect?
2. Can the District expend capital outlay funds in either moving and/or installing the Bushton fixtures in the Holyrood building?
3. Can capital outlay funds be expended to make improvements in a district building (i.e. transfer HVAC and other fixtures from Holyrood to Bushton) if the building is going to be sold?
4. What processes can be used for the sale of a district building?

The Lease Purchase Agreement

I have preliminarily visited with Kevin Cowan the municipal bond attorney in Wichita who provided advise on the original Lease Purchase Agreement. We are of the opinion that the lease can be amended if the equipment is moved and continued to be used or owned by the district. Details would need to be confirmed to protect the tax-exempt status and retain the low interest rate on the lease. However, at this time it appears to be doable. Wilson State Bank has previously indicated its willingness to work with the district and modifying the Lease Purchase Agreement.

Use of Capital Outlay Funds - Moving/Installing Fixtures at Holyrood

K.S.A. 72-53,113 allows the Board of Education of any school district to make a annual tax levy (capital outlay levy) for the financing of redevelopment projects on property located within the school district. The statute provides for the adoption of a resolution providing that the capital outlay fund may be used for the purpose of acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, maintaining and equipping of school district property and equipment necessary for school district purposes.

K.S.A. 72-53,116 states that capital outlay funds may be used for the purpose of the acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, maintaining and equipping of school district property and equipment necessary for school district purposes.

Based on the language of the above statutes it is my opinion that the school district can expand capital outlay funds to move the Bushton building fixtures as part of a reconstruction, repair, remodel and in the maintenance and equipping of school property. The board discussions I have heard seem to fall within the provisions for an allowed expenditure from the capital outlay fund.

As a note Angie Staullbaumer with the Kansas Association of School Boards provided Greg with her opinion that the capital outlay funds could be used for the above stated purpose as well as for making improvements to the Bushton building prior to a sale. She also pointed out to Greg K.S.A. 21-6005 relating to the misuse of public funds. The statute reads in part:

> "Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position."

Based on the above statutes and the Attorney General's opinion which follows, in the next section, it seems clear that using capital outlay funds for the stated purposes is allowed and is not a misuse of public funds.

Expending Capital Outlay Funds for Improvements to a Building to be Rented or Sold.

In rendering the following opinion, the capital outlay statutes referenced above are again considered without being restated. Additionally, Kansas Attorney General Opinion 2011-12 from the current Attorney General Derek Schmidt appears to be directly on point.

Attorney General Opinion 2011-12 was rendered by the Attorney General at the request of the Kansas State Department of Education. The specific inquiry from KSDE was "whether the board of education of a unified school district may use public funds from its general fund, supplemental general fund, or capital outlay fund, to finance the remodeling or renovating of a building that the board intends to lease or sell to a third-party which will use the building without regard to school district purposes."

In reply the Attorney General's opinion states:

> "Clearly a board may use such funds (capital outlay and other) to reconstruct, repair, or remodel a building that it intends to use as a school building or for other district purposes. We believe that the phrase "necessary for school district purposes" encompasses those instances when the repair or remodeling is undertaken to make the building marketable to third party. The funds derived from the lease or sale would be subject to statutory control and would be used, ultimately, in educating pupils of the school district."

While Attorney General opinions do not have the force of law, they are often considered to be persuasive when a court of law interprets a statute.

Based on Attorney General Opinion 2011-12 it appears that a school district can expand capital outlay funds, as well as other funds, to repair or remodel a building that it intends to sell.

Process for Sale of a District Building.

K.S.A. 72-3216 generally states that the board of education has title to and care of school properties. It allows the board by a majority vote, at a regular meeting to dispose of property no longer needed by the district. The disposition can be made in such manner and upon such terms and conditions as the board deems to be in the best interest of the school district.

The board, therefore, in its sole discretion, by majority vote may determine how to dispose of property which is no longer needed. The property can be sold, gifted or otherwise disposed of.

The board, like an individual, can sell the property at public auction, by private treaty, through sealed bid or by any other process. If property is to be disposed of it would typically be done by a resolution of the board. The resolution would typically state that the property is no longer needed by the school and state the terms of the sale. The resolution would authorize the president of the board to sign a deed which is attested to by the clerk.

The resolution needs to be adopted at a regular meeting of the board by majority vote.

If the Bushton property is sold by a sealed bid process the board could authorize the superintendent to seek bids, using the process below, with desired modifications. If an acceptable bid is received the board could adopt a resolution for sale of the building based on the bid terms.

Possible Sealed Bid Process.

Advertise that the property is for sale by sealed bids for at least 2 to 3 weeks, reserving the right to reject all bids. The advertisement should be sent to anyone who has expressed interest.

The advertisement should state general terms for the sale and provide contact information for the school. Information and terms could include the following:

Size and Description of building.
Being sold with or without certain lighting, HVAC and other fixtures.
Sale to be "AS IS" and "WHERE IS."
Date and time by which bids will be received.
Date and time bids will be opened.
Title to be transferred by quit claim or warranty deed at buyer's option, with the Buyer being responsible for the cost of a title search - title insurance.
Normal sale cost to be split Closing – Drawing of Deed and Contract.
Anticipated closing date.

Disclaimer.

The opinions provided in this letter are opinions only and are based upon the cited statutes and Attorney General Opinion. There appears to be limited or no court case law regarding the expenditure of capital outlay funds. A court could have differing opinions; however, based upon the legal information currently existing the opinions provided seem to have a solid basis in law.

Thank you for letting me prepare this opinion on your behalf. I will be glad to answer further questions.

Thanking you for your consideration, I remain,

Sincerely yours,



John Sherman
Sherman, Hoffman & Hoffman, LC
Email: jsherman@shhlawyers.com

JS

cc: Greg Clark Superintendent of Schools