

School Districts—School House, Construction of.

If there is sufficient money in the general fund of a school district of the third class to provide for nine months school, the surplus may be used to build a school house provided the electors so direct.

April 6, 1917.

Mr. W. M. Black,
County Attorney,
Shelby, Montana.

Dear Sir:

I have your letter of March 28th, from which it appears that a special election has recently been held in a district of the third class, at which election it was voted to empower the Board of Trustees to construct a school house in a section of the district where there are over ten pupils of school age, but who live too far from the present school. It further appears that the district has plenty of money to meet all running expenses and also to cover the cost of constructing a school building and furnishing the same. You have submitted to me the question of whether or not the Board of Trustees has authority to use money in the general fund for the erection of this school building, or whether the Board will be compelled to resort to a bond issue.

By Section 2002 of the School Law a special school tax not to exceed ten mills may be levied on the taxable property in the district to raise a special fund to maintain the schools of the district and to furnish additional school facilities therefor. By Section 2004 any surplus in the general school fund to the credit of the district, after providing for the expenses of not less than nine months school, on a vote of the qualified electors of the district, may be used for the purpose of retiring bonds and improving buildings and grounds.

Subdivision 8 of Section 508, as amended by Senate Bill No. 64, of the 1917 Session Laws, approved February 22nd, 1917, in connection with the power of a school board is as follows:

"To build or remove school houses, and to purchase or sell school sites, Provided, that in district of the third class they shall not build or remove school houses, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place and purpose of such election."

In view of the foregoing it would appear to me that if there is sufficient money in the general fund of the school district to provide for nine months school, the surplus may be used for the purpose of building a school house, provided a majority of the electors of the district, voting at an election held for that purpose, so direct.

Our Supreme Court in *Tinkle v. Griffin*, 26 Mont. at 431-2, in construing Section 5, Article XIII of the Constitution, used the following language:

"The expression 'majority of the electors thereof voting at an election', etc., clearly means a majority of those who vote, and not a majority of all the electors of the county, or

of those who vote upon any other issue at the same or some other time. * * *

"It is the theory of our government that those electors control public affairs who take a sufficient interest therein to give expression to their views. Those who refrain from such expression are deemed to yield acquiescence."

This case was cited and followed in *Morse v. Granite County*, 44 Mont. at 95. This Section of the law as now amended requires only a majority of those who vote and not a majority of all electors residing in the district.

By Section 509 of the School Law, the contract for the construction of a school building if the amount involved is over \$250.00, must be let after first advertising calling for bids.

Respectfully,

S. C. FORD,

Attorney General.