

**School District—Whether Board of Trustees is Authorized to Expend Money for a Community Building to be Used as a Gymnasium.**

The Board of Trustees of a school district is without authority to expend money for the construction of a community building to be used as a gymnasium and for other public functions.

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My dear Mr. Husband:

I have your letter inquiring whether a school district is authorized to make an appropriation of \$500 toward the construction of a community building with the understanding and agreement that the school district shall use the building for a gymnasium and other public exercises.

The building is designated a community building. The question, as you say, is as to whether the Board has implied power to do this, it being admitted there is no express authority for such expenditure.

In the case of *State ex rel. Bean v. Lyons*, 37 Mont. 354, Chief Justice Brantly, after quoting the sections of the statute covering the powers of School Boards, said:

“No other provision has been called to our attention, nor have we been able to find any, which enlarges the powers conferred by this section or modifies the duty enjoined. It must, therefore, be regarded, not only as a grant of power to such boards, but also as a limitation upon their power, both as to its extent and as to the mode of its exercise. That is

the rule of construction applicable to all statutes granting and defining the powers of such municipal or quasi-municipal bodies."

See, also, the recent case of *Keeler Bros. v. School Dist. No. 3*, 62 Mont. 356, 205 Pac. 217.

The only implied authority which Boards of this kind have is such as is necessary to carry out those expressly given.

Under Section 1205, Revised Codes of 1921:

"County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this act, and for no other purpose, except that in any district any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine months' school, on a vote of the qualified electors of said district may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage, or barn."

It is apparent, under this section, that the School Board would have no authority to expend any of the money in the General Fund for purposes other than incidental expenses, except as to surplus remaining after providing for nine months' school, and then only upon a favorable vote of the district.

It is my opinion, therefore, that the trustees of a school district are without authority to expend money for the construction of a community building to be used for a gymnasium and for other public functions.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.