

Bonds—County Attorney—Fees—Schools—School Trustees—Trustees.

The County Attorney is the legal adviser of the Trustees of a school district and as such is not entitled to charge the school district fees for assistance in the preparation of a transcript in bond proceedings.

L. A. Brown, Esq.,
County Attorney,
Poplar, Montana.

My dear Mr. Brown:

You have submitted to this office for my opinion the question of whether it is the duty of the County Attorney to assist a School Board in the preparation of its transcript in a bond issue to the extent of preparing the transcript.

Section 1328, Revised Codes of 1921, makes the County Attorney the legal adviser of the County Superintendent of Schools and all School Trustees.

The instructions issued by this office to School Boards in second and third class districts contain the following:

"The County Attorney promptly on receiving the above papers shall examine the same. If the proceedings have been regular and valid, and the foregoing instructions have been complied with, an opinion to that effect should be written and sent with the papers to the State Board of Land Commissioners. If the County Attorney cannot approve, he should immediately return the papers to the Clerk, pointing out all defects and how to remedy the same. Clerks of school districts should consult with County Attorneys for advice in all matters as to procedure."

While this office has prepared forms of transcripts for the guidance of School Trustees who desire to issue bonds, this was done in order, not only to assist them, but to establish a uniform method of procedure throughout the state and to simplify the matter of examining transcripts by this office when submitted by the school districts to the State Land Board.

In a recent case, a former Deputy County Attorney of one of the counties of this state brought suit against a School Board for a fee alleged to be due him for assisting the school district in preparing its bond transcript. The school district defended the action on the ground that it was the duty of the County Attorney to perform these services for the school district by reason of the statute making him the legal adviser of the School Board, and the District Court so held.

This office has consistently held that the advice required to be given a Board of Trustees by the County Attorney includes the preparation of all necessary instruments legal in character. The instructions above referred to, requiring the County Attorney to examine a transcript and approve the same before it is submitted to the Land Board, require the County Attorney to point out the manner of amending the transcript where amendment is necessary. This would, in effect, be equivalent to preparing the transcript in the first instance. If it were necessary to sue or defend an action involving a school district, the County Attorney would not only be required to advise, but to prepare all pleadings in connection with the case. This would be true in preparing a transcript where the Trustees were unable to do so without assistance.

It is, therefore, my opinion that the County Attorney, as the legal adviser of the School Board, is not entitled to charge a school district for assistance in connection with the preparation of a transcript in bond proceedings.

Very truly yours,
WELLINGTON D. RANKIN,
Attorney General.