

Schools—Buildings—Funds—High Schools.

Use of common school funds for the furnishing of a high school building discussed in the opinion.

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November 22, 1929.

My dear Mr. Vralsted:

You submit the following state of facts: School District No. 12 of Judith Basin county bonded itself during the year 1925 for the purpose of constructing a building to be used for high school purposes. The building was built as a separate building from the grade school building. After the building was completed the trustees of the district, without a vote of the people, equipped the same at a cost of some \$10,000 or \$12,000 paid out of the general fund of the district. While your letter does not state, I take it that during the years 1926, 1927 and 1928 the use of these funds in this manner did not in any way interfere with the maintenance and operation of the school insofar as the common grades were concerned, but it is stated that now the funds in the

general school fund are so small that the grade school is suffering therefrom although it is not indicated in what manner it is suffering.

You ask if the school trustees were authorized by law to equip the building used for high school purposes by the use of moneys in the general fund of the district.

The so-called "district high school" is not an entity separate and apart from the other school system of the district. It is but an enlargement of the scope of learning taught in the schools of the district. It is a part of the district school. A district maintaining what is commonly called a high school is more properly referred to as a school district maintaining high school classes or grades in the district schools. The building in which these high school classes are conducted and all the property used in connection therewith are the property of the school district and have no different status than the other buildings and property which are used in teaching the elementary grades. They all constitute the district school plant, and all the work of the school, whether it be instructing in the elementary or the higher grades, is the work of the district school.

The erection of the building in question was merely the construction of an additional school building by the district for use in conducting school in the district. Having been erected for the purpose of using it for district school purposes it follows that it may be furnished in the same manner as a schoolhouse in which the elementary grades are taught is furnished with certain restrictions hereafter referred to.

In my opinion a school district can furnish a schoolhouse with moneys from the general fund. This is indicated by Section 1203 R.C.M. 1921, which provides a method of raising additional funds for, among other things, providing "additional school facilities." This implies that the other funds to which these are additional are available for furnishing facilities for the school and that the object of Section 1203 is merely to raise more funds for the same purpose.

In *State vs. Cave*, 20 Mont. 468, it is said that the term "school facilities" includes providing school rooms, charts, maps, books of reference and school teachers. On parity of reason I think this term would also include school furniture, as certainly a school equipped with teachers, pupils, books and school room but without school furniture would be as useless as a school fully equipped in all respects but without a teacher.

The restrictions above referred to are as follows: The apportionment to the school district of its share of the income from the permanent school fund is by force of Article XI of the Constitution restricted in its use to common school purposes. However, as these moneys become commingled with the other moneys of the district it is impossible to say what, if any part of them, is used in the payment of any particular warrant. The constitutional provision is satisfied if out of all the moneys in the general fund an amount of money is used for common school purposes that equals the amount put in the fund by reason of the apportionment from the income of the permanent school fund.

Subdivision 6 of Article XI of the Constitution requires the legislature to raise funds by taxation, or otherwise, which, when added to the moneys apportioned to the school district from the income of the permanent school fund, will be sufficient to provide a common school in each district for at least three months in each year. The legislature has provided numerous means of raising this additional money but these moneys are commingled with others also and this provision of the Constitution is satisfied when there is paid from the general fund a sufficient amount of money for the purpose of maintaining the common school grades for a period of three months in each year. The balance of the funds may be disposed of in any manner in which the legislature may permit.

With the advent of maintaining high school classes in district schools the district school merely enlarged its scope of instruction as a district school and the funds provided for the district school except as to the apportionment of the income from the permanent school fund and the additional moneys required to maintain a common school for three months in each district in each year and except further any funds which are raised for some other special purpose became applicable as much to the furnishing of a building in which high school classes are to be maintained as they were applicable to the furnishing of a room or building in which common school grades were taught.

The history of the legislation upon the subject of high school classes in district schools shows that it was the contemplation of the legislature that these classes could be taught in school buildings already established and furnished, or the district could build necessary buildings if and when authorized to do so under the same laws that theretofore applied only to the erection of a building for common school purposes. No special legislation was enacted relating to the building of schoolhouses by the district for maintaining high school classes but because the maintaining of such classes became a part of the district school function it was considered that the existing laws were sufficient to authorize the erection of a building to be used for high school purposes. Likewise, no special legislation was enacted relating to the authority of the school trustees to furnish such schoolhouses or rooms, but the duty of the board of trustees under Section 1015, as amended, to provide for school furniture applies as much to furniture for buildings used in the teaching of high school classes as well as to furniture to be used in connection with the teaching of the common school grades. Inasmuch as no specific legislation was had with reference to paying for this furniture it was likewise contemplated that it should be paid for in the same manner as furniture is paid for when purchased for use in connection with teaching common school grades.

Section 1205 is no limitation in respect to furnishing schoolhouses as it merely limits the use of the surplus in the fund to certain purposes. In my opinion, as stated above, the furnishing of schoolhouses is not confined to the surplus in the fund but the fund may be resorted to when needed for that purpose. In this connection it will be observed that Section 1309 R.C.M. 1921 provides that no common school fund

may be used for carrying on normal school work in connection with accredited high schools except when authorized to do so by a vote of the people. It is significant in this respect that there is no such limitation to be found in the statutes with relation to the use of the common school funds for high school purposes and this lends support to the conclusion hereinabove stated.

Inasmuch as the common school was provided for in the year this money was used and also since that time, it appears that the constitutional provisions above were complied with and the use of the fund for the furnishing of the school building in which high school classes are to be maintained was not, in my opinion, illegal.

Very truly yours,

L. A. FOOT,

Attorney General.