

Opinion No. 175.

**Schools and School Districts—Bonds.
Public Buildings—Construction of.**

HELD: A school district organized under the provisions of Chapter 16, Laws, 1937, may construct a school building under the provisions of Chapter 115, Laws, 1937, solely from its own funds without the aid of or any appropriation from the federal government.

October 14, 1937.

Mr. J. W. Morrow
Deputy County Attorney
Bozeman, Montana

My Dear Mr. Morrow:

You have submitted to this office the question as to whether or not a school district, organized and created under the terms and provisions of Chapter 16, of the 1937 Session Laws, may construct a school building and issue bonds for its construction, pursuant to the authority that may be vested in it under the provisions of Chapter 115, of the 1937 Session Laws, without receiving any aid or appropriation from the United States government or any federal agency. The cost of the construction of said building to be exclusive upon said district.

Section 2 of Chapter 115, *supra*, provides that:

"To effectuate the purposes of this act, counties, cities, towns, rural improvement districts, school districts, irrigation districts, drainage districts, sewerage districts, federal reclamation projects and water users' boards of control thereof, and other political subdivisions and governmental agencies of this State, are hereby authorized until December 31, 1939, to undertake a program of public works which may include, among other things the following: (1) The construction, repair and improvement of public highways, school houses, county and district high schools, public parks and parkways, public buildings and any other publicly owned instrumentalities and facilities; (2) the control, utilization and purification of water and extension and improvement of existing municipal water works; (3) or procuring a supply of water for a municipality which shall own and control such water supply and devote the revenues derived therefrom to the payment of the debt; (4) the construction, reconstruction, alteration or repair, under public regulation or control, of low cost housing and slum clearance projects; (5) the construction of any other projects of any character eligible for loans under the provisions of the acts of congress known as the emergency relief and construction act of 1932, and the national industrial recovery act."

Section 3 provides:

"With a view of increasing employment quickly the boards of county commissioners, city and town councils, boards of trustees of school districts of governmental subdivisions, and agencies mentioned in this act are authorized and empowered: (1) to construct, finance, or aid in the construction or financing of any public works project included in the program undertaken pursuant to Section 2, of this act; (2) upon such terms as the President of the United States shall prescribe and pursuant to the national industrial recovery act or other legislation of the United States and any laws of this State, to make loans, convey real property and accept grants for the construction, repair or improvement of any such projects; (3) to sell any real or personal property to the federal government in connection with the construction of any such project and to buy therefrom any property so constructed or to lease for any period not to exceed forty (40) years any such project therefrom, with or without the privilege of purchase, and any such contract or lease shall not be deemed the incurring of any indebtedness within the terms of the constitution of this State; (4) to accept grants for any such projects; (5) to make and enter into any contracts with the federal government or any governmental agency aforementioned and to borrow money, issue bonds, debentures or certificates of indebtedness with respect thereto; (6) or to contract for the construction of any project to be paid for solely from the earnings of said project and without liability on the part of the governmental subdivision or agency contracting for the construction of same; and to levy taxes, divert funds or to amortize the indebtedness; notwithstanding any statutory restrictions or limitations on the right or power of such county, municipal corporation or other agency described herein."

Section I of Chapter 115 states that the purpose of the act is to provide relief for unemployment, caused by a grave emergency now existing and which emergency will exist until December 31, 1939, unless the governor of the State of Montana sooner declares said emergency ended, and Section I of the act declares that it is the policy

of the legislature to meet the emergency by providing public work for all unemployed and distressed people throughout the state. If the district constructs said proposed building, it must be constructed with the view of relieving unemployment and securing a benefit for the distressed people throughout the confines of said district, and not with the purpose, except incidentally, to obtain a building, and the assets of the district should not be pledged to pay said bonded indebtedness, unless such purpose of providing employment is the direct object. The construction of the building should not be had as a subterfuge to expend money indirectly where it cannot be expended directly.

The act does not provide that the governmental agency must contribute any particular portion of the cost of the construction of said building. The language of the act is: "to construct, finance, or aid in the construction or financing." The district may pay the whole of the cost, or it may pay only a portion thereof, subject, however, to the condition that such construction must be: "upon such terms as the President of the United States shall prescribe, and pursuant to the National Industrial Recovery Act, or other legislation of the United States, and any laws of this state." The building, if constructed, would be a public project, and as such would be under the jurisdiction and subject to all federal regulations, particularly as to the specifications in the construction of the same, the kind of labor, and the hours of labor. Only that labor would be employed as would come under the designation of "unemployed and distressed," for the theory of the act is to relieve the unemployed and to afford employment for the distressed, and otherwise ameliorate the emergency proclaimed by the legislature.

It would appear that there would be no logical reason for the district to subject itself to the federal regulations unless it was contemplated that the district would receive some federal contribution. While the act itself does not require the federal agency to contribute any definite portion to the construction of the building, and the entire cost may be met by the district, yet for practical purposes it would seem to be implied that if the district did conform to the federal regulations that it should have federal contribution.

Therefore, it is my opinion, that if the district will subject itself to the regulations of the United States government, or such federal agency as may be designated, and upon such terms as the President may prescribe, pursuant to the National Industrial Recovery Act, or other regulations of the United States; and if the federal government or agency will accept such an arrangement and will approve of the same, and will approve of said project, which should be done prior to the flotation of a bond issue; then your district would be authorized to so bond itself, with the approval of the majority of qualified electors in the manner and form provided for in Chapter 115 of the 1937 Session Laws. If said district does not, or cannot, conform to federal regulations, it is without authority to construct said building and bond itself under said law. We further advise you, if you contemplate to act under Chapter 115, supra, to secure the approval of the federal agency before taking any action whatsoever.