

No. 177

RURAL SCHOOL DISTRICT BONDS—SCHOOL DISTRICT FUNDS—BONDS

Held: Bond issue of dissolved rural school district may be paid off only from money raised by the county commissioners' levying taxes upon all property located within the territory which formerly constituted the rural school district and not from school funds raised for other purposes.

July 16th, 1941.

Hon. J. W. Walker
Commissioner of State Lands and Investments
State Capitol
Helena, Montana

My dear Mr. Walker:

Reference is made to your letter of July 14th with which was submitted a letter from John G. Skinner, of Red Lodge, written in behalf of the county commissioners of Carbon County.

It appears that nothing has been paid on a bond issue held by your department in the amount of \$23,338.00 which was issued by the rural school district of Carbon County under date of August 21, 1921, when the rural schools of Carbon County were operating under the provisions of Chapter 211 of the Laws of 1919, which, after amendment, became Chapter 96 of the Political Code of the Revised Codes of Montana of 1935. The bonds issued were to fund outstanding warrants. The rural school district was dissolved in accordance with law July 1st, 1927. The law relating to rural school districts was repealed by the Twenty-seventh Legislative Assembly. (See Chapter 88 of the Laws of 1941.) This, of course, did not impair the obligation of the existing bonds.

To pay off the \$23,338.00 bond issue, there is available only \$5,600.00; but we are advised there is plenty of money to the credit of the school district of the county to pay off the bonds and still run the schools of Carbon County until taxes are collected in November. The question is, then, whether this money may be diverted to pay off the bonds.

However advisable or convenient it might be to pay off the outstanding bond issue from money belonging to the school districts, as distinguished from the money raised by a levy to pay bonds and interest, now available in the sinking fund for that purpose, this cannot be done unless authorized by law. School districts and their trustees have no power except such as is expressly granted or necessarily implied. (*McNair v. School District*, 87 Mont. 423, 425, 288 Pac. 188; *Keeler Bros. v. School District*, 62 Mont. 356, 361, 205 Pac. 217; *State ex rel. Bean v. Lyons*, 37 Mont. 354, 96 Pac. 922.) I find no provision in the Budget Law for elementary schools (Chapter 94 of the Political Code) that would seem to authorize the use of school district money for the purpose of paying off the bonds. Since the statutes granting and defining powers of school boards will be con-

strued not only as a grant of powers to such boards, but also as a limitation thereon, both as to the extent and as to the mode of its exercise, it is clear school trustees cannot authorize the use of school money in a manner not authorized by law. No other officers can spend this school money except the trustees and their authority, as above indicated, is entirely circumscribed by statutes.

Another limitation on the use of school moneys, in addition to the Budget Law, is Section 1205 of the Revised Codes of Montana of 1935, which reads as follows:

"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. If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or if he shall refuse to bring the same, a suit may be brought by any taxpaying elector in the district."

The Montana Supreme court, construing this statute in the case of *State ex rel. Stephens v. Zuck et al.*, 67 Mont. 324, 327, 215 Pac. 806, said:

"This is a special statute enacted by the legislature for the express purpose of protecting a school district against the unlawful dissipation of its funds. It declares in no uncertain terms that the trustees who consent to such unlawful use of the school moneys shall be required personally to make restitution in an action at law which may be prosecuted by any taxpaying elector in the district if the county attorney refuses to bring the action."

It should be noted this office (Vol. 16, Opinions of the Attorney General, page 307) has held Section 1205 cannot be reconciled with the Budget Act and surplus funds must lapse into the unappropriated funds of the district and, accordingly, could not in any event be spent, even on a vote of the electors. The penalty provision of that section still seems to remain, however.

Ample provision is made for the payment of the outstanding bonds and the interest thereon. Section 1048 of the Revised Codes of Montana of 1935, though now repealed, which was last amended in 1925, provided, in part:

". . . in counties where the rural school district was organized prior to the passage of this act the county commissioners of the county shall continue to levy the taxes upon all the property located within the territory which formerly constituted the rural school district, until the interest and the principal of all bonds issued by the rural school district shall have been paid in full."

It would appear, therefore, although the portions of the school funds not needed to run the schools between now and the time taxes will next be collected may not be used to pay off the outstanding bonds, a levy could and should be made now to pay off the principal remaining after applying to the payment of the bonds and interest all moneys available in the fund provided for such payment. Needless to say, levies should have been made in past years which would have been sufficient to raise enough money to pay off the bonds and interest from the sinking fund provided for that purpose.

To summarize, it is my opinion the bond issue may be paid off only from money raised by the county commissioners' levying taxes upon all property located within the territory which formerly constituted the rural school district and not from school funds raised for other purposes.

Very truly yours,

JOHN W. BONNER
Attorney General