

Opinion No. 15.

Schools and School Districts— Abandoned School Sites, Sale of—Sale of Abandoned School Sites—Trustees, School—Board of Trustees of Schools.

Held: Abandoned school sites may be sold by the board of trustees of a school district either under the provisions of Subdivision 8 of Section 1015, Revised Codes of Montana, 1935, as amended, or under the provisions of Chapter 106, Laws of 1939.

February 13, 1945.

Mr. Thomas Dignan
County Attorney
Valley County
Glasgow, Montana

Dear Mr. Dignan:

You requested my opinion concerning the procedure to be followed in the sale of land by a school district. You advise the school building on the land in question was torn down ten years ago and the land has been vacant since and is not needed for school purposes.

Subdivision 8 of Section 1015, Revised Codes of Montana, 1935, as amended, gives school trustees the power to sell school sites after submission

of the question of sale to a vote of the electors in the district and which sale must be approved by a majority of the electors voting at the election.

Chapter 106, Laws of 1939, grants the power to the board of trustees to sell school lands which are not suitable or abandoned for school purposes. The power so granted is not limited by the requirement that the question of sale be submitted to the voters at an election, but notice is required that a meeting will be held for the purpose of sale so that electors may appear and protest the passage of the resolution of sale.

It is to be noted that Chapter 106, Laws of 1939, recites:

"The powers and authority granted by this act shall be in addition to the powers and authority granted in Sections 1014, 1173, Subdivision 2 of Section 1262.83 and Subdivision 8 of Section 1015, as amended, of the Revised Codes of Montana, 1935."

It would thus appear that Chapter 106 did not repeal Subdivision 8 of Section 1015, but was in fact a supplementary act granting the school trustees the power to sell school lands without submitting the question to the electorate. However, under Chapter 106, the power granted is limited to the sale of school lands which have been abandoned and are undesirable, while such is not the case under the provisions of Section 1015, as amended.

Chapter 106, Laws of 1939, is a special statute dealing with a specific matter, while Chapter 103, Laws of 1943, is a general statute.

Section 1015, Revised Codes of Montana, 1935, was amended subsequent to the enactment of Chapter 106, by Chapter 103, Laws of 1943. The amendment to Section 1015 by Chapter 103, consisted in the addition of a subdivision 8, but no change in subdivision 8 was made, which is the part of Section 1015 under consideration here, and further, the title to Chapter 103 does not refer to or amend Chapter 106. Our Supreme Court has often said that repeals by implication are not favored. (*State ex rel. Nagle v. Leader Co.*, 97 Mont. 586, 37 Pac. (2d) 561; *State ex rel. Normile v. Cooney*, 100 Mont. 391, 47 Pac. (2d) 637.)

As Chapter 103, Laws of 1943, did not expressly repeal Chapter 106, Laws

of 1939, and repeals by implication are not favored, the two should be construed, if possible, to give effect to both. This was recognized by our court in *State ex rel. Ewald v. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472, wherein it was said:

"It is our duty to reconcile the statutes, if possible, and make them operative."

The legislature, in enacting Chapter 106, Laws of 1939, stated the powers granted by the act were additional powers and thus recognized that Subdivision 8 of Section 1015 was also operative. The amendment to Section 1015 by Chapter 103 did not affect Subdivision 8 and as both were operative prior to the amendment, there is no reason to believe the legislature intended to alter the situation. Both safeguard the electors' interests in the sale of school lands in that one requires an election to authorize the sale and the other requires notice of the meeting to be given the electors before a resolution is passed providing for sale and also an additional safeguard is given the electors in that an appeal may be taken to the district court.

It is therefore my opinion abandoned school sites may be sold by the board of trustees of a school district either under the provisions of Subdivision 8 of Section 1015, Revised Codes of Montana, 1935, as amended, or under the provisions of Chapter 106, Laws of 1939.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General