

Opinion No. 26

SCHOOLS AND SCHOOL DISTRICTS; Districts; sale of buildings and property — SCHOOLS AND SCHOOL DISTRICTS; Schoolhouses; sale of abandoned building—SCHOOLS AND SCHOOL DISTRICTS; School lands; sale of — Sections 75-1522 and 75-1634, Revised Codes of Montana, 1947.

- Held:**
- 1. The board of trustees of the district in which a school building of an abandoned school district is located should call the meeting of the residents of the territory of the abandoned district for considering the sale of school property as provided in Section 75-1522, RCM, 1947.**
 - 2. School property may be sold under the provisions of Section 75-1634, RCM, 1947, without provision for competitive bidding and any reasonable method of sale may be used.**

September 29, 1961

Mr. Gordon R. Hickman
Wheatland County Attorney
Harlowton, Montana

Dear Mr. Hickman:

You requested my opinion concerning the sale of an obsolete school house which is situate in territory of an abandoned school district. You advise me that the abandoned school district was divided and consolidated with two school districts in your county.

You ask two specific questions concerning the sale of the school building. First you ask if the trustees of both districts to which the former district was annexed or the trustees of the district in which the school house proposed to be sold is located should call the meeting of the residents of the territory of the abandoned district as provided in Subsection 3 of Section 75-1522, RCM, 1947.

Subsection 3 of Section 75-1522, RCM, 1947, provides in part as follows:

"The school buildings, if any, in the abandoned territory, shall not be disposed of or removed unless approval for disposal or removal is given by a majority vote of the residents of the abandoned district present at the meeting in such school buildings, such meeting to be duly called by the board of trustees of the consolidated district."

This same subsection also provides that if the territory of an abandoned district is divided and attached to two districts, the funds shall be apportioned between the districts to which such territory is attached.

As the statute is silent as to school buildings, general rules will apply. In the case of *Hauf v. School District*, 52 Mont. 395, 158 Pac. 315, our Supreme Court said:

"In the absence of anything to show an intention to the contrary, things affixed to the realty, such as buildings permanently resting upon foundation imbedded in the soil, are part of the realty and pass with it."

The school district receiving the territory in which the school house is located acquires the title to the school building under the rule of law above quoted.

The portion of Subsection 3 of Section 75-1522, RCM, 1947, quoted above, provides that the meeting of the residents shall be "called by the board of trustees of the consolidated district." It should be observed that the singular is used in designating the body which is to call the meeting. It, therefore, must be concluded that the board of trustees of the district in which the school house is located should call the meeting.

You also ask if the property offered for sale requires an advertised call for competitive bids.

There is no general statute requiring competitive bids for the sale of school real property. Our Supreme Court, in the case of *Missoula County vs. Smith*, 91 Mont. 419, 8 Pac. 2d 800, held that competitive bidding is not necessary for the letting of a construction contract and said:

"In the absence of statute, defendants were not required to let the contract in question under competitive bidding."

Section 75-1634, RCM, 1947, authorizes the trustees of a school district to sell any lands, buildings, fixtures, or other property which is undesirable or unsuitable for school purposes. This statute makes it the duty of the trustees, before selling the property, to pass a resolution stating that the property is not necessary for school purposes and, in the resolution, provide for the sale of the property. Before the resolution is finally adopted notice must be given of the meeting when the final resolution will be considered and electors of the district given an opportunity to make their protests. There are no specific directions in the statute concerning the method of conducting the sale and the general rule found in *State v. Lensman*, 108 Mont. 118, 88 Pac. 2d 63, would apply. The rule, as expressed in the case, is:

"The procedure is not fully nor clearly provided, but when an official duty is imposed and no mode of exercise is prescribed, the one who is required to perform such duty may adopt any mode reasonably suitable to carry the duty imposed into effect."

It is, therefore, my opinion that the board of trustees of the district in which a school building of an abandoned school district is lo-

cated should call the meeting of the residents of the territory of the abandoned district for considering the sale of school property as provided in Section 75-1522, RCM, 1947.

It is also my opinion that school property may be sold under the provisions of Section 75-1634, RCM, 1947, without provision for competitive bidding and any reasonable method of sale may be used.

Very truly yours,
FORREST H. ANDERSON
Attorney General