

School Trustees, Authority to Erect Buildings. School Building, Authority of Trustees to Build. Taxes of School District, Authority to Use for Building.

School Trustees have no authority to use the money of their district for the purpose of erecting a school building, or additional school room, without first being authorized so to do by a vote of the district.

Helena, Montana, June 7, 1909.

Hon. R. Lee McCulloch,
County Attorney,
Hamilton, Mont.

Dear Sir:

I am in receipt of your letter of June 3, 1909, in which you request an opinion upon the following proposition:

Where a school district has a school house that is practically unfit for use, and is entirely inadequate for the purpose for which it is attempted to be used, is the tearing down of the old building, or the removal of it, and the building of a new one the "furnishing of additional school facilities" within the meaning of such term, as used in Section 995, Revised Codes; in other words, could the board of school trustees under said Section 995 certify a ten mill levy for their district and use such money, or any part thereof, for the purpose of building a new school house, or additional rooms to an existing school house without first submitting the question of the erection of such building to the electors of the district, as provided in Subdivision 6 of Section 875, Revised Codes.

The supreme court in this state in *State v. Lyons*, 96 Pac. 923, had occasion to construe said subdivision 6 of section 875, and in their opinion, after quoting said subdivision 6, the court said:

"No other provision has been called to our attention, nor have we been able to find any, which enlarges the powers conferred by this section or modifies the duty enjoined. It must therefore, be regarded, not only as a grant of power to such boards, but also as a limitation upon their power, both as to its extent and as to the mode of its exercise. This is the rule of construction applicable to all statutes granting and defining the powers of such municipal or quasi municipal bodies."

Said subdivision 6 being therefore a limitation upon the powers of school boards, it necessarily follows that they have no authority to build or remove school houses without first submitting such question to a vote of the district; and, in our opinion, the fact that they already have a building and simply desire to build an additional building or an adjoining room would not relieve them from obligation of following the provisions of said subdivision. While the phrase "to furnish additional school facilities" may be broad enough to authorize the trustees to use money raised pursuant to a ten mill levy, made in accordance with said section 995, for the purpose of building additional school rooms, it is apparent that before the trustees would have the authority to use such money they must be so authorized by the voters of the district, under said subdivision 6 of section 875.

This construction of said statute is further supported by the provisions of Section 898, revised codes, which provides that:

"The surplus in the general school fund to the credit of said district, after providing for the expenses of not less than eight months school; may on a vote of the qualified electors of said district, be used for the purpose of building and improvement."

Here it will again be noticed that before the trustees have a right to use school money for the purpose of building they must get authority by a vote of the qualified electors of the district. Therefore, in our opinion, a board of school trustees has no authority to erect a new building to replace an old one, or to erect additions to an existing building, without first procuring authority so to do from the voters of the district.

Very truly yours,

ALBERT J. GALEN.

Attorney General.