

School Trustees, Levy of Tax for Building Purposes. Tax Levy of Special by Trustees for Building Purposes.

School Trustees have no authority, directly or by vote of the electors, to levy a special tax for the purpose of erecting buildings. Where a special tax has been levied for maintenance of schools, and there is a surplus after providing eight months' school in third class districts and nine months in first and second classes, such surplus, upon a vote of the district, may be used for building and improvements.

Helena, Montana June 12, 1909.

Hon. W. L. Ford,
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:

I am in receipt of your letter of June 9, requesting an opinion upon the following question:

"Can the trustees of a school district, authorized by a majority vote of the qualified electors of the district levy a special tax on the property of said district to raise funds for the purpose of building a school house and purchasing land for the same?"

You also enclose a copy of an opinion given by you on such question, in which you held that the trustees could not raise money by special levy for the purpose of building a school house and purchasing land for the same. In such opinion you also stated that in your opinion the only method provided for raising funds by a school district for the purpose of building a school house and purchasing lots for the same is by the issuance of bonds, as provided by section 1003, revised codes.

We agree with your opinion wherein you held that a majority of the electors of the district cannot authorize the trustees to levy a special tax on the property of the district to raise funds for the purpose of building a school house and purchasing lands for the same. But as to the latter proposition we are of opinion that your holding should be modified as hereinafter indicated.

The only authority given by statute for levying taxes upon the property of a school district are sections 994 and 995, revised codes, and also section 1008, which latter section relates only to the levying of the taxes necessary to pay interest on, and create a sinking fund, to redeem bonds issued by the district.

Under section 994, the commissioners levy a four mill tax for the support of the common schools, and under section 995 the trustees are authorized, without first submitting it to a vote of the electors of the district, to certify to the county commissioners a levy not to exceed ten mills

"To raise a special fund to maintain the schools of the district, to furnish additional school facilities therefor and to furnish such appliances and apparatus as may be needed."

As the levy made under section 995 does not have to be authorized by a vote of the district, it necessarily follows that a vote of the district authorizing the trustees to make such levy gives them no greater power or authority in the use of the money raised by such tax than they already have under the provisions of said section.

The supreme court, in *State v. Cave*, 20 Mont., 468, construed the language now used in said section 995, and in effect held that such language did not confer authority upon the trustees to use the money raised by the tax authorized by such section to purchase lots or build school houses, or additions thereto or to remove the same. Therefore, if said section 995 does not authorize the trustees to so use the money raised thereunder, it follows, of course, that a vote of the electors of the dis-

trict could not confer authority upon the trustees which was not given by such section. However, sections 898 and 997 provide that:

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

These sections apparently authorize the use of money under certain circumstances which was raised by the levies made in sections 994 and 995, but such money can only be the surplus to the credit of the district after providing for eight months' school in districts of the third class. and in districts of the first and second classes the trustees must provide for nine months' school, under the provisions of section 995. The question then arises as to the method of determining the surplus that may be used for building and improvement. In our opinion, such surplus can only be determined after the levy and collection of taxes for the district. In other words, it is impossible to determine the amount of surplus to the credit of any district prior to the 30th day of November, for the reason that the trustees have no means of knowing the assessed valuation of the district until after the board of equalization has met, and then they have no means of knowing the amount of delinquent taxes until after the 30th day of November. Therefore, after November 30, and the apportionment by the superintendent of the general levy has been made, the trustees can readily determine the amount of money necessary to pay the salary of teachers and other current expenses for the balance of the school year, and any sum to the credit of the district in excess of that amount would be the surplus which could be used for the purpose of building and improvement. However, such surplus cannot then be used for such purposes until the question has first been submitted to a vote of the district and authorized by the electors. Therefore, a vote of the electors at this time authorizing the trustees to use the money raised from such levy is void, for the reason that the electors have no means of knowing the amount of surplus that can be used for such purposes, and, therefore, have had no opportunity of expressing themselves upon the question of the amount of money to be used for erecting buildings and improvements.

Very truly yours,

ALBERT J. GALEN,

Attorney General.