

School Trustees, Authority of Board to Let Contract for Digging a Well Upon Land Belonging to the Government. Board of School Trustees, Authority Of to Let Contract. School Trustees, Must Act as Board.

The authority of school boards or other officers to bind the district by contract relative to school matters is controlled by statute and is such as is only conferred either expressly or by necessary implication by such statute. The trustees can only act as such at a meeting properly called and held and have no authority to act individually.

Under the provisions of Sec. 875 the board might have authority to let a contract for the sinking of a well upon land owned by the district to procure water for the use of the school provided it was necessary, but would have no authority to let such contract to sink a well upon land not owned by the district and under such circumstances the district could not be held liable for the contract.

March 27, 1911.

Mr. John Hurly,
County Attorney, Valley County,
Glasgow, Montana.

Dear Sir:

Your letter of March 24th has been received, wherein you state that in School District No. 20 of your county, bonds have been voted for the building of a school house. As yet the board of trustees has not acquired title to a site, but two of the members of the board employed a well digger to dig a well, upon land belonging to the government and within the reclamation district, for \$250.00, the board understanding that title to the land would afterwards be given to the district. You state you are not certain whether the letting of the well contract was done at a meeting of the board, or whether the individual members simply authorized the digging of the well. My official opinion is requested as to whether or not the contract for the digging of this well is one which is enforceable against the district.

In reply, I will say, that it is a well settled rule of law that boards of trustees can only act as such at a meeting properly called and held, and that one or more of the individual members of the board cannot bind the board or act for it. The board must act as an entity and within the scope of its authority.

Williams v. Commissioners, 28 Mont. 365.

Assuming, however, that the contract was let by the board at a meeting duly called for that purpose, I am of the opinion that under the statement of facts contained in your letter, the district could not be held liable for the action of the board.

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Vol. 35 Cyc. 949, and cases cited.

Section 875, Revised Codes of 1907, defines the powers of school boards. It is possible that under the provisions of subdivision 4, of this section, the board might have authority to let a contract for the sinking of a well upon land owned by the district to procure water for the use of the school, provided, the sinking of such well was necessary for that purpose. However, it is my opinion that the board would have no authority to let a contract to sink a well upon land not owned by the district, and to which the district might never acquire title. The legislature has very wisely seen fit to define the powers and duties of school boards by express legislation upon the subject, and under no construction of the enumerated powers would a board of school trustees have authority to expend the money of the district for the sinking of a well upon land not owned by the district.

Persons dealing with school boards are bound to ascertain the limits of their authority as fixed by law and are therefore chargeable with notice of any limitations thereon.

35 Cyc. 951.

You are therefore advised that under the circumstances stated in your letter, the district cannot in my opinion be held liable for the cost of the sinking of the well.

Yours very truly,

ALBERT J. GALEN,

Attorney General.