

School Funds, Authority of Trustees to Use. School Trustees, Authority to Use Funds. School Buildings, Right of Trustees to Erect.

A board of school trustees has no authority to expend moneys obtained by a tax levied for building purposes without first being authorized so to do by a vote of the district.

May 4, 1911.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of the 28th inst., relative to the right of the trustees of School District No. 15, your county, to use a certain amount of money derived from a tax levy, for the purpose of constructing a new school house; said sum to be used in connection with an amount derived from the sale of a bond issue by said school district,

and in your letter you also state that you have advised that the levy was made without authority and that the sum could not be used for the purpose of building except the question was first submitted to a vote of the electors.

I affirm your views in this regard and would respectfully call your attention to an opinion heretofore rendered by this office, addressed to Hon. R. Lee McCullough, county attorney at Hamilton, and reported in Vol. 3, Opinions of Attorney General, p. 128, wherein we held:

“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.”

As stated in your opinion, while the phrase “to furnish additional school facilities” may be broad enough to authorize the trustees to use money raised pursuant to a levy 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.

I would suggest that, in order to relieve the situation caused by the apparent misinformation of the trustees at the time the levy was made, that the trustees submit to the electors of their district the question of their authority to use the funds obtained through such levy for building purposes. After this consent of the electors has been obtained there would then be no further objection to the use of this money for the purpose for which it was raised.

Yours very truly,

ALBERT J. GALEN,

Attorney General.