

**County Free High School. Trustees County Free High
School, Power Of. Dormitory, Authority to Construct.**

Trustees of county free high school have no authority under present statute to construct and maintain a dormitory.

June 13th, 1911.

Hon. Henry G. Rodgers,
County Attorney,
Dillon, Montana.

Dear Sir:

I am in receipt of your letter of the 3rd inst., submitting the question:

"Have the trustees of the county free high school authority

to acquire grounds and construct buildings for the purpose of maintaining a dormitory in connection with the high school?" It is fundamental that all the power and authority which the board of trustees have must be granted by statute, and that power is now given in Section 918 et seq. of the Revised Codes. Under the provisions of Section 925, the board have the authority to certify to the county commissioners the taxes required for high school purposes, etc., for the succeeding year, and may expend the money thus received in the manner provided by law.

Opinions of Attorney General, 1908-10, p. 355.

The said Section 925 also confers upon the trustees the authority to issue bonds, but by the provisions of the succeeding section (926), the question of issuing the bonds must be submitted to the electors. The provisions of said Section 925, if standing alone, would seem to confer upon the board of trustees the authority to issue bonds without any election being held therefor but these so issued are county bonds, and if the board of trustees have the authority to issue such bonds, then they are in effect discharging the duties and exercising the functions of the board of county commissioners, who are constitutional officers. This, we apprehend, could not be done, even if that were the object of the law.

Gary v. Helena, 42 Mont. 135; 111 Pac. 735.

Under the provisions of Section 930, Revised Codes, high school trustees are given authority to "let such contracts for necessary school buildings," and are also given authority to contract "for the use of suitable buildings for high school purposes." A dormitory, in my opinion, would hardly come within the meaning of these provisions.

"A dormitory is a room or rooms or building used to sleep in; sleeping quarters; a lodging house. It does not include a dining hall."

Hillsdale College v. Rideout, 82 Mich., 94; 46 N. W. 373.

The supreme court has several times passed upon the power of boards of county commissioners, and have held them to the strict letter of the law; the court has frequently decided that there are no implied powers and that such boards have no powers whatsoever unless given by statute, except the incidental powers necessarily included.

Williams v. Commissioners, 28 Mont. 366; 72 Pac. 756;

Yegen v. Commissioners, 34 Mont. 80; 85 Pac. 743.

The erection and maintenance of a dormitory would, undoubtedly, in a certain sense, contribute to the welfare of the school; it would at least contribute to the comfort of the pupils and would probably increase the attendance. Good roads and bridges would probably do the same thing. The question here is not a matter of convenience to the school or to the pupils, but whether or not the law is broad enough to authorize the trustees to erect and maintain a building of that character, for if they have the authority to erect it, have they the authority to maintain it?

In view of the construction of the powers granted to various boards

contained in the decisions of our supreme court I am of the opinion that some further legislation will be necessary to authorize the trustees to construct and maintain a building of that character and for that purpose. I will admit that it is a very close question but I prefer to be on the safe side and inasmuch as the board have no implied powers, I will hold that they do not have such authority.

Yours very truly,

ALBERT J. GALEN,

Attorney General.