

School Districts, Bonds Of. Bonds, of School Districts, to Purchase School Buildings.

Under the provisions of Section 875, Revised Codes, the trustees of a school district when authorized by a vote of the district so to do, may purchase a lot and build a school house thereon, and under this section they may also purchase a lot and building already constructed thereon for school purposes, when authorized by the district so to do.

Helena, Mont., July 26, 1911.

Mr. Fred L. Gibson,
County Attorney,
Livingston, Mont.

Dear Sir:

I am in receipt of your letter of July 24th, submitting for my official opinion the following questions:

1. Can a school district issue bonds for the purpose of buying a lot and building already constructed thereon for use as a school house?
2. If so, what is the form of the question to be submitted to the electors?

In reply I will say that Sec. 875, Revised Codes of the state of Montana, declares that every school board, unless otherwise specifically provided by law; shall have power and it shall be its duty; (6) to build or remove a school house, and to purchase or sell school lots when directed by a vote of the district so to do.

Sec. 1003, authorizes the board to submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds, for the purpose of building and furnishing one or more school houses in the district and purchasing land necessary for the same; and Sec. 1005 provides that the ballot shall be in form as specified in that section.

In the case of State, ex rel Bean, vs. Lyons, reported in 37 Mont. page 354, the supreme court of this state affirmed the judgment of the district court commanding the trustees to submit to the electors the question of removing a school house and school to some site, or to one of two or more sites so specifically designated in the notice of election as well as in the ballots to be used at the election, as to enable the electors to vote intelligently thereon. This decision construed subdivision 6 of Sec. 875 above referred to and in the course of the opinion the supreme court used the following language:

"Manifestly, the theory of the legislature in this enactment was that the people who are to enjoy the benefit of the district schools shall have the right reserved to themselves of serving their own convenience and that of their children in selecting the place in the district where the schools should be located, and at the same time to husband the resources of the district by holding a check upon those who happen to occupy the position of trustees for the time being. So the trustees have no power to build or remove a schoolhouse, or the school, or to purchase or sell school lots, until they have consulted the electors. And, while there is no express provision as to when and how an election shall be called, yet, when the exigency arises requiring the trustees to consult the electors for authority to act, they must do so. When put to the choice between acting without authority and pursuing the proper method to obtain it, they must refrain from acting until authority is obtained. The power to act without authority does not exist. When the necessity for action arises, the duty to seek authority becomes imperative. Therefore, in the absence of any other express provisions as to how they shall proceed, the provisions touching the periodical meetings for the election of trustees, or for calling special elections to obtain authority to issue bonds, and the like, furnish a safe guide."

As appears from the foregoing decision the board of trustees have no authority to act in purchasing a lot or building a schoolhouse until they have been authorized so to do by the electors of the district. The electors also have the right to determine where the site for the schoolhouse shall be. Under the provisions of Sec. 875 above referred to the board of trustees; when authorized by a vote of the district so to do, may purchase a lot and build a schoolhouse thereon, and it is my opinion that this section is broad enough to permit the trustees, when properly authorized, to purchase a lot and building already constructed thereon for school purposes. If they have authority to purchase a lot with a building thereon, they undoubtedly, under the provisions of Section 1003, have authority to submit to the electors of the district the question as to whether or not the district shall be bonded for that purpose, and it is my opinion that they may do so.

The notice of election and form of ballot must be sufficiently specific to enable the electors to vote intelligently upon the proposition submitted and I suggest the following form of ballot would meet the requirements of Sec. 1005 in your particular case:

"Shall bonds be issued and sold to the amount of dollars and bearing not to exceed per cent interest for a period not to exceed years for the purpose of purchasing that certain lot and the building thereon situated atand owned by, and furnishing the

same to be used as a school house?

Bonds, Yes?

Bonds, No?

Yours very truly,

ALBERT J. GALEN,

Attorney General.