

County Free High School, Location Of. Trustees of County Free High School, Duty Of. County Commissioners, Authority of to Permit Use of County Property.

Where the board of trustees of the county free high school selects, as the site for said school, land owned by the county and the county gives its consent thereto, the board of county commissioners may by appropriate resolution authorize the use of said land as the site for the erection of the county free high school building.

April 4, 1912.

Honorable P. E. Allen,
County Attorney,
Red Lodge, Montana.

Dear Sir:

Honorable W. F. Meyer, as president of the Carbon county free high

school board, has submitted to this office a question relative to the right of the county to permit the use of certain lands now owned by the county for the use of the county free high school.

I do not know that this question has ever been submitted to you but I do know that you have never submitted it to this department. However, it appears to be a question which will shortly be presented to your county board, and in view of the fact as stated in the letter of Mr. Meyer that it is desirable to avoid any delay in the matter, I thought it not improper to express to you at this time my views relating to the authority of the county board.

It appears from the statement of facts that the county is now the owner of six lots in the city of Red Lodge, which are not being used for any county purposes, and which are not held by the county for any special purpose; that the county free high school is desirous of erecting a building and that the county is willing that the building shall be erected on these lots. The question presented is, as to the authority of the board of county commissioners to permit this land to be used for that purpose, and if the board has such authority, the method to be pursued in granting such right. As heretofore considered by this department (O. A. G. 1906-08, p. 173) a county free high school is a county institution and the indebtedness therefor is a part of the indebtedness of the county within the meaning of Sec. 5, Art. XIII, of the State Constitution, and is subject to the construction given to that section by the courts and we know that the provisions of this section of the constitution is construed very strictly.

Hefferlin v. Commissioners, 16 Mont. 349;

Hoffman v. Commissioners, 18 Mont. 224;

Hotchkiss v. Marion, et al. 12 Mont. 218;

Tinkle v. Griffin et al, 26 Mont. 426;

Shaw v. Young et al, 66 Pac. (Wash.) 64.

Under the provisions of Sec. 930, Revised Codes, it is the duty of the board of trustees of the county free high school to select at the place designated as the location for the school the best site that can be obtained and to acquire title thereto which, "shall vest in the county."

There can be no question but what the board of county commissioners, unless these lots are held for a particular purpose, has the authority to sell this property and to execute a deed to the purchaser. (Subdivision 10, Section 2894, Revised Codes.) It is also apparent that the board of trustees of the county free high school under the provisions of said Section 930 Revised Codes may in its discretion make selection of these same lots as the best site for a county free high school. That after making such selection condemnation proceedings could be instituted and successfully maintained and a tax levied for the purpose of raising the money to pay for the property, and when all this was done the title would then vest in the county, but the title is already in the county, so that after all these proceedings had been taken the title to the property would be where it is at the present time, to-wit, in the county. The county treasury might contain a little more money but this would come out of the tax payers for they would have

to provide by taxation for the payment of the property if the title thereto passed into private hands. I do not believe that the law ever contemplates such indirect methods, but that in view of the fact that the county free high school is a county institution and that the title to the real estate used vests in the county, that it is within the power of the board of county commissioners by appropriate resolution to authorize the use of this land as a site for the erection of a building for the county free high school, and that without any advertising, or without any sale or purchase of the property. This power, I believe, is conferred upon the county board by the general powers as contained in Sec. 2894, Revised Codes, and particularly in sub-division 22 thereof, for the county free high school is certainly a "business and concern of the county."

This letter is addressed to you for the reason that the county board will probably submit to you the question to its authority and how to proceed in this matter, and with a view of aiding in the expeditious solution of the question.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

P. S. Of course the school board must first make selection of these lots as the proper site for the erection of the high school building.