

**School District, School Houses, Authority to Erect by Special Tax. Trustees of School Districts, Second Class, May Levy a Special Tax to Erect School House. Tax, Special by School District.**

The trustees of school district of the second class may levy special tax for the erection of a school house.

March 28th, 1913.

Hon. T. F. Shea,  
County Attorney,  
Deer Lodge, Montana.

Dear Sir:

I beg to acknowledge receipt of your favor under date of the 26th instant, requesting an opinion as to whether or not the board of

school trustees of a school district of the second class may erect a school house and pay for it by means of a special tax, without first submitting the question to the electors of the district. I agree with the opinion expressed by you that the trustees of such a school district have this authority. Heretofore the supreme court has held that under the provisions of Sec. 875, Subdiv. 6, of the Revised Codes, the board of school trustees of a school district did not have such authority.

State ex rel. Bean v. Lyons, 37 Mont. 354.

State ex rel. Jay v. Marshall, 13 Mont. 136.

The new school code is a substantial re-enactment of the existing law, but Subdiv. 6 of Sec. 875 of the Revised Codes has been amended so that the restriction upon the powers of school trustees, which formerly applied to school trustees of all districts, is now made applicable only to school trustees of school districts of the third class. We must assume that the Legislature in making such amendment intended to modify the law as it heretofore existed, and that it made the amendment in view of the decisions of the supreme court above referred to, and the numerous opinions of this department to the same effect.

You are therefore advised that in my opinion the school trustees of a second class school district may erect a school house and pay for it by means of a special tax, without first submitting the question to the voters of the district.

Very truly yours,

D. M. KELLY,  
Attorney General.