

School Trustees, Authority of to Issue Bonds. School Building, Authority of Board of Trustees to Issue Bonds for Repair of. Repairs of School Building, Authority to Issue Bonds for. Bonds, Authority of Board of School Trustees to Issue for Repairs.

Bonds cannot be issued by a board of school trustees for the purpose of raising money to be spent in repairing the front of a school house which has been previously built.

May 15th, 1913.

Hon. Frank B. Whicher,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication under date the 15th instant, requesting my opinion as to whether the trustees of school district No. 4, in your county, would be authorized under the law to issue bonds for the purpose of raising money with which to repair the front of a school building.

The authority of school trustees to issue bonds is found in Chapter 76 of the Session Laws of the Thirteenth Legislative Assembly,

in Secs. 2915, 2028 and 2030 respectively of the said chapter; and the purpose for which such bonds may be issued are as follows:

- “(1) Building and furnishing one or more school houses in said district, and purchasing land necessary for same;
- (2) raising money for the purpose of repaying moneys previously borrowed for the necessary maintenance of schools;
- (3) refunding bonds for the purpose of providing the necessary fund to pay maturing, and redeemable, or optional bonds.”

It will be noticed that bonds for the purpose of raising funds for buildings are authorized by Sec. 2015 of Chap. 76 of the Session Laws of the Thirteenth Legislative Assembly, and that they may be issued to raise funds for the purpose of building and furnishing school houses.

There is a plain distinction between building and repairing. To build means to construct or erect anew, and is distinguished from repair in this, that building means the construction or erection of a structure where none was before, while repair implies the existence of something to be repaired or remedied.

Hutchinson v. City of Olympia, 5 Pac. 606.

Gavin v. Norcross, 43 South Eastern 771.

Subdiv. 7 of Sec. 508 of the said Chap. 76 gives power to, and makes it the duty of school trustees to “rent, repair and insure school houses,” and authority is given to the trustees of school districts by Sec. 1912 of the said law, “to levy taxes and raise money necessary for such purposes.”

In as much as the Legislature has used the term “build” in the provision for the issuance and sale of bonds by school trustees when dealing with the subject of school houses and finances, and that it has in no other portion of the same enactment given power to school trustees to levy taxes for the maintenance of schools, it is my opinion that they intended that bonds should only be issued for the building of school houses and not for the repairing thereof.

You are, therefore, advised that it is my opinion that bonds could not be issued by the trustees of a school district for the purpose of raising funds to be spent in repairing the front of a school house which has been previously built.

Very truly yours,

D. M. KELLY,
Attorney General.