

School Trustees, Authority of to Issue Bonds. Bonds, for What Purpose Issued by District. School Houses, Bonds for Repair of. Indebtedness, Bonds for When May Be Issued.

Under certain conditions electors of district may authorize the issuance of bonds for repair of school house.

Authority to expend money in erection of new building does not authorize the use of money for repair of old building.

A board of school trustees may issue bonds to redeem out-

standing interest bearing warrants for indebtedness to old district.

July 23rd, 1913.

Hon. D. W. Doyle,
County Attorney,
Conrad, Montana.

Dear Sir:

I am in receipt of your letter submitting the questions:

(a) As to the authority of the board of school trustees to issue coupon bonds for the purpose of repairing school houses; and

(b) As to the authority of the trustees to use money to repair school houses, which has been raised for the purpose of building and furnishing school houses.

Incident to these questions, and as gathered from the statement of facts in your letter, there is also a question as to the authority of the school trustees to use a part of the moneys authorized at an election "for the purpose of purchasing the school site and buildings, and for furnishing and repairing the same" for the payment of a debt due from the district to the old district of which it was formerly a part, arising from the division of the school property.

These questions we will here consider in their order:

(a) Chap. 76, Laws of 1913, providing for the issuance of bonds in the form of ballot would indicate that such bonds can be issued only

"For the purpose of purchasing a school site and building a school house thereon, and for furnishing the same."

The general purpose to be accomplished by the district is the acquisition of a school building where school may be held, and by giving this law too strict a construction it would, in many cases, defeat the very object sought to be attained. For instance, the purchase of a school site and building a school house thereon and furnishing the same, if strictly construed, could not be separated, hence a district which already owned a school site would be barred from the issuance of bonds to erect a building thereon. In other words, by this strict construction, a district could not issue bonds except they used a part of the money derived therefrom for the purchase of a school site, for the erection of the school house, and for furnishing the school house. The object sought to be attained by the law must be kept in mind. That which appears to be three separate propositions in the form of ballot is, in fact, only one. The law does not any place attempt to nominate the amount which must be spent for the school site, or for the building, or for the furnishing. It frequently happens that a restriction named in the law is specifically applicable to the board of directors, or trustees, rather than to the people residing in the district. The supreme court of this state has held this to be the case with reference to a board of county commissioners.

Reed v. Lincoln County, 46 Mont. 31.

The method of procedure to be followed in submitting questions to the electors, where the statute does not give specific direction, is outlined by the supreme court in *State ex rel. Bean v. Lyons*, 37 Mont. 354. The question as to the right of a school district to purchase a school house has been heretofore considered by this department in an opinion addressed to Hon. Fred. L. Gibson, county attorney at Livingston, Montana, under date of July 26th, 1911, reported in *Opinions Attorney General, 1910-12*, at p. 231, wherein it is held that:

"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."

I am of the opinion that the abstract right does exist in a district to authorize the expenditure of money for the repair of a school house where the question has been fairly and fully submitted to the electors of the district and an affirmative vote given thereon. Of course, voting bonds for inconsequential repairs may perhaps be an abuse of discretion on the part of the district itself, but where the repairing or remodeling amounts, practically, to a new building there is no reason, in business or law, why the district should not be permitted to utilize a building already erected when it is admitted that they would have the authority to erect an entirely new building by the side of the old one.

(b) Where, however, money has been authorized "for the purpose of purchasing a school site and building a school house thereon, and for furnishing the same," it could not legally be used for the repair of the old building, for the question as to the repairing, or remodeling, etc., was never passed upon by the electors, and the natural inference would be an entirely new building.

And where the trustees have been authorized by the electors to raise money for the purchase of school sites, or the erection of buildings thereon, such money so raised cannot legally be used for the payment of outstanding debts against the district. At p. 220, *Session Laws of 1913*, provision is made for the payment of debts in the case of a division of district property by the issuance of interest bearing warrants, and in Subdiv. 6, found on p. 221, specific and direct authority is vested in the school trustees to issue coupon bonds for the purpose of redeeming such warrants. This authority is also again expressed on pp. 292 and 293 relating to the authority of school trustees to issue refunding bonds, hence, after the interest bearing warrants have been issued in the manner provided on p. 220, the trustees of the district have the authority to issue coupon bonds for the purpose of redeeming such warrants.

However, as I understand from the statement of facts contained in your letter, the questions authorized to be submitted to the electors at the proposed election would not authorize the school trustees to spend any portion of the money so raised for the redemption of outstanding indebtedness, or for the repair of school houses. Erecting

school houses and paying outstanding indebtedness are two separate and distinct propositions.

The conclusions reached by you I believe are correct, but I have thought proper in this to take occasion to call your attention to the matters herein discussed relative to the general right and authority of the school trustees and of the electors of a school district.

Very truly yours,

D. M. KELLY,
Attorney General.