

**Contract, to Sell Lands. School Houses, on Private Lands. Agreement, to Convey to School Districts. Trustees of School, Agreement to Convey Land to District.**

Oral contract to convey land is void, but facts do not disclose whether the contract is oral or in writing. The contract and the records relating thereto must determine the liability.

Form of action to contest the county suggested.

November 11th, 1913.

Hon. H. A. Davee,  
State Superintendent Public Instruction,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 5th instant, enclosing a statement of facts submitted by the county superintendent of Meagher County, and asking an opinion thereon. From the statement it appears that a trustee of the school district, acting in his official capacity, requested and consented to the erection of a school house upon his private land, agreeing to convey to the district the grant on which the house was situated; that subsequently after he ceased to be trustee, having failed to execute the deed to the district, he ordered the building removed; that he also closed up one of the ways or means of access to the building; that prior to the time when he gave this notice the school year had begun and the school was being conducted in said building, the question arising being:

“May a person who while acting as school trustee cause to be erected on his private land a public school house under agreement to convey the necessary site to the district, and subsequently refuse to make such conveyance and compel the school district to remove the school house from the land?”

So many things are necessary to be considered in determining the validity of a contract for the conveyance of land that we can certainly not say definitely what the ultimate rights of the parties will be as determined by a court. Under the provisions of Sec. 5091, Revised Codes, an oral contract for the conveyance of land is void, and this section of the statute has received a somewhat strict construction by the supreme court of this state.

Lewis v. Patten, 42 Mont. 528.

Prentice v. McKay, 38 Mont. 114.

Archer v. Chicago, etc., Ry. Co., 41 Mont. 56.

Great Falls W. W. Co. v. G. N. Ry. Co., 21 Mont. 487.

The statement of facts presented does not indicate whether this agreement to convey was oral or in writing. If oral, it would be void if existing between private parties; if in writing, its own terms must determine its character. It may be that the records of this district relative to the erection of this building will disclose the fact that this trustee did subscribe to a writing on the records, by which he agreed to make this conveyance; and the fact, too, that he was

acting at the time as a public official, expending public moneys, may have some bearing upon the question, for as such public officer he had no lawful right to expend the district's money in the erection of buildings on land not owned or controlled by the district. From this meager statement of facts it would seem that an action would lie against this trustee, and that the county attorney should be immediately acquainted with the facts relating thereto. At this time and from the information at your command, it would appear that a complaint should be brought against him alleging two causes of action: One to compel the execution of a conveyance to this property, which should state in detail all the fact, including the fact that he was at the time a trustee, and that it was public moneys that were being used in the erection of this building, and if the records disclose any writing thereto, that should also be alleged; and, second, an independent cause of action, stating in detail the facts, among them being that with his consent and knowledge a school house was erected there, public school conducted in it, and contracts entered into for the present year without any objection from him for the conducting of a school in that building during the school year, and also alleging his threat to interfere with the school—and ask that he be restrained from in any manner interfering with the school. If the district failed on its first cause of action, it would thereby lay a foundation for a subsequent action for damages against this trustee, and if the restraining order is issued, it would prevent any interference with the school for the present at least.

Yours very truly,

D. M. KELLY,  
Attorney General.