

School District, Right of to Borrow Money. Money, Right of School Districts to Borrow. Warrant Issued by School Districts, Registration of. Registration of Warrants, Issued by School Districts.

School trustees can act only when there is express authority for the proposed action, and a school district has no authority to borrow money.

School district warrants properly drawn and not paid for want of funds, should be registered by the county treasurer as other warrants are registered.

November 21st, 1913.

Hon. H. S. Magraw,  
State Examiner,  
Helena, Montana.

Dear Sir:

I have your favor under date of November 17th, in which you ask me to advise you:

"Whether or not under Chap. 76, of the Session Laws of the Thirteenth Legislative Assembly, a school district is permitted to borrow money, and also what provision there is for registering the warrants issued by any school district?"

In regard to the first question, it is a general principle of law that such bodies as school trustees can only act when there is express statutory authority for the proposed action. I find no provision in Chap. 76, Session Laws of 1913, authorizing school trustees to borrow money for the district.

Sec. 2038 of said law, found on page 295 of the published volume of the Session Laws of 1913 refers to money which has been loaned or advanced to the board previous to the passage of the law, and could not by any implication be construed as giving authority to the trustees of school districts to borrow money in the future. At most it is merely a ratification of acts that might have been done in the past. This construction of the law may seem to be in conflict with an interpretation heretofore rendered by this office in an opinion to Hon. Thomas Dignan, county attorney at Glasgow, under date of February 15, 1909, and found at p. 39, Vol. 3, Opinions of Attorney General, 1909-10. It is to be noted, however, that that opinion was rendered upon a special state of facts, and I think that the rule laid down there could not be said to be general, and you are advised that as a general rule a school district has no authority to borrow money, the codes providing other means for furnishing them with funds.

As to the second question: That question has also been considered by this office on a previous occasion in an opinion to Hon. H. C. Schultz, found at p. 306, Vol. 3, Opinions Attorney General, 1908-10, wherein it was held that school district warrants when properly drawn and not paid for want of funds should be registered by the county treasurer, and bear six per cent interest from the date of registration in the same manner that other warrants were registered. I think that opinion is correct, and so advise you.

Yours very truly,

D. M. KELLY,  
Attorney General.