

State Fair, Building for Educational Purposes at. Building for Educational Purposes, at State Fair. School Moneys, Appropriation of for Educational Building at State Fair. Appropriation, of School Moneys.

District school funds may not be appropriated by authority of boards of trustees in aid of a building for educational purposes on the state fair grounds.

February 25th, 1914.

Hon. Lewis Penwell,
President Montana State Fair,
Helena, Montana.

Dear Sir:

I am in receipt of your communication of even date herewith as follows:

"As you know, Mr. Davee, the state superintendent of public instruction, is endeavoring to raise the necessary funds to construct on the state fair grounds a building for educational exhibit purposes. As this matter has been put up to a number of schools and school districts throughout the state, the question has naturally arisen whether or not a school district under our law has the authority to appropriate funds to cover its share of the expense of such a building?"

Sec. 2, Art. XI, of the Constitution provides for the public school fund. In *Butte v. School District*, 29 Montana, 340, it is held that money raised by taxation for school purposes becomes a part of the school fund of the district within which it is raised. Sec. 3, Art. XI, provides that the public school fund shall forever remain inviolate. Sec. 2004, Session Laws of the Thirteenth Legislative Assembly, provides that school moneys may be used only as authorized by law, and:

"If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum."

Pertinent to the matter under inquiry, I take the liberty of quoting from the case of *Veal v. Charitan County Court*, 15 Missouri, page 412:

"The welfare of the state is concerned in the education of her children. She is provided and is providing means for that purpose, not only for those now in existence but for those who may come after them. The fund, as has been said, is a permanent one, and if every man, woman and child in a township should petition the county court to give away that which is by law entrusted to it for the education of its children, it should without hesitation reject their prayer. * * * It is great error to suppose that the inhabitants of a township, for the time being, can dispose of or in any way impair the fund. They are the passive recipients of its increase, for the use of the schools, so long as they are inhabitants of the town-

ship, but those who are come after them have as much right to it as they have, and it is the policy of the law to preserve it for them."

I am of the opinion, therefore, that the use of public school funds for the purpose indicated in your letter would be without warrant or authority of law.

Yours very truly,

D. M. KELLY,

Attorney General.