

**School Houses, Location of. Location of School Houses on  
Public Domain. School Trustees, Power of.**

A board of school trustees cannot erect a school house upon land to which the district has no title. There is no provision made in the federal law under which a board of school trustees may get title to a portion of the public domain for the purpose of erecting a school house thereon.

March 28th, 1901.

Hon. C. A. Linn,  
County Attorney,  
White Sulphur Springs, Montana

Dear Sir:

I am in receipt of your recent communication with the inquiry

from the trustees of School District No. 7 of your county attached. The question raised by that letter is:

“Whether the school trustees could erect a school house upon ground which is included within the homestead entry for which final receipt or patent has not yet been issued?”

The letter states that one Morris has agreed to make a bond to the effect that he will give the district a deed to one acre surrounding a spring for the purpose of school grounds, as soon as he makes final proof and secures patent.

The law providing for the issuance of bonds for the purpose of securing school houses and school grounds contemplates that the money raised by a bond issue shall be used for the purchase of land. This language implies that the trustees shall secure title to the ground on behalf of the district. Under the circumstances, as stated in your letter, it would seem impossible for the trustees to get title to the grounds which they propose to purchase, and a homesteader could give them no better title than he has, which at present amounts to only a right to have patent issued to him after he has fulfilled certain conditions. This, I think, would not be a compliance with the law.

As to the further question of whether or not school trustees would be able to get title to the land in the event that the present claimant did not eventually get a patent, I have been unable to find any provision of the United States law under which a board of school trustees could get title to a portion of the public domain for the purpose of erecting a school house thereon.

Yours very truly,

D. M. KELLY,  
Attorney General.