

**School Buildings, Erection of. Funds, Power of School Trustees Over. School Trustees, Authority of to Use Funds.**

A board of trustees of a district of the third class cannot use funds in their hands for the erection of a school house, unless directed to do so by a majority of the electors of the district, by an election upon the question.

April 9, 1914.

Mr. J. B. Borgsteve,  
Helena, Montana,

Dear Sir:

On April 7th, you submitted to me orally the following question:

"Can a board of school trustees, after being authorized to move the site of a school house by a majority of the electors of a district at an election held for the purpose of deciding that question, use funds in their hands for erecting a new school house, without submitting the question of whether a new school building shall be erected, to the electors of the district, though they are petitioned by a majority of the electors of such district to so use the money in the erection of a new school house?"

The only provision of the school law upon this point, is found in Sub. 8 of Sec. 508, Chap. 76, Session Laws of the 13th Legislative Assembly, and is as follows:

"To build or remove school houses, and to purchase or sell school sites, provided that in districts of the third class they shall not build or remove school houses, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district."

The decision of the question hinges upon the proper interpretation of the word "direct," as used in the above quotation. The word

"direct" implies that the person or persons giving the direction have authority. And this direction is distinguishable from petition, for a petition usually leaves it within the discretion of the board or persons petitioned, whether the prayer will be granted or not. A direction to do a thing is mandatory.

I am, therefore, of the opinion that by the use of the word "direction" in the statute, the legislature intended that this matter should be decided by election, and that, therefore, your board of trustees could not proceed to erect a new school house upon the petition of a majority of the electors. This conclusion is strengthened by the fact that the legislature provided no means of checking up the names on a petition, or of determining who were electors. In the case of an election, the election officers would have the means at hand for determining this question.

Yours very truly,

D. M. KELLY,  
Attorney General.