

School Boards, Right to Purchase Athletic Apparatus. Trustees of School, Right to Purchase or Lease Athletic Apparatus. Athletic Apparatus, Right of School Board to Purchase, Lease or Rent.

Trustees of district schools are vested with authority in certain cases to purchase, lease or rent athletic apparatus used by the school.

June 7, 1916.

Hon. Frank Arnold,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter asking for an opinion of this office:

“As to the powers, rights and liabilities of a school board to purchase for the use of the school, and to lease or rent when not used by the school, athletic apparatus?”

In view of the fact that there is not any direct statutory enactments expressing in specific terms just what may or may not be done by a school board with reference to athletic apparatus, the question submitted is not capable of definite and specific answer. Nor will it ever be capable of such answer until either the legislature or the court of last resort has passed upon it.

The general principles involved, and the conclusions reached relative to analogous questions, furnish the only guide. The real function of the public school is the proper development of the child, mentally and physically. As was said in the case cited by you:

“We are asked, ‘How can it be said that the physical development of children is a function of government?’ The answer seems obvious: Just for the same reason that it can be said that the mental development of children is a function of government. Both are intended to raise the standard of citizenship. The state is certainly as much interested in the physical standard of its citizens as in their mental standard. Condemnation of land for playgrounds in connection with the public schools is a public use”.

Howard v. Tacoma School Dist. 152 Pac. 1004 at p. 1006.

The undoubted duty of the school board is to see that schools are so maintained and conducted as to accomplish the purpose for which they are created. The general powers and duties of the board are expressed in Section 508, Chapter 76, Laws of 1913, but only the general powers are there enumerated. All that which is necessary to make effective the general powers expressed, is necessarily implied. A specific rule or law cannot be formulated for every action that is required to be taken. It has been held by this department, and well supported by authority that a school board is vested with the general power to purchase reference books, maps, charts, etc., although the

same may not be specifically enumerated in the powers expressed in said above section 508. The meaning of the phrase "appliance and apparatus" is there considered, and in Section 2002 of said Chapter 76, mention is made of "school facilities", and in *addition* thereto, mention is made of appliance and apparatus. A copy of the opinion of this office discussing this matter is herewith enclosed. It has been held by this department that school trustees have the authority to erect sheds for the care of animals necessarily used by the children in attendance of the school, although no direct statutory provision may be found conferring that specific authority. (Opinion Attorney General to Hon. Herbert H. Hoar, April 30, 1915.) It has also been held that the school board may have authority to purchase a piano for the use of the school. (Opinions Attorney General, 1912-14, p. 159.)

Now if the school board may exercise the authority above enumerated for the benefit of the school, why may it not make purchase of such athletic apparatus as is really and actually necessary to the physical development of the child, in so far at least as it is necessary and useful to him in attaining the mental development which he derives from the study of the books required to be taught. The limit to which the board may go in making selection of this athletic apparatus is more a question of fact to be gathered from the necessities arising from conditions existing in the particular school district, than it is a question of law. It is fundamental that the board must act within reason in all matters. While the board may erect sheds for the accommodation of horses used in conveying the children to and from the school, it is not vested with authority to erect a barn, and while it may purchase reference books, it does not have the authority to furnish free text books without the consent of the district. A ball used on the school ground is in a sense an athletic apparatus, but the permission for its use would not render the board liable. Exercise is actually necessary to enable the child to successfully pursue his studies, and such athletic apparatus as is required, or reasonably necessary, to accomplish this purpose, is certainly within the power of the board to furnish. I am not advised as to the kind of apparatus that has been purchased by this school board, but I am of the opinion that so long as the board acts within the bounds of reason, that it is strictly within its rights, and that the individual members of the board are not liable in damages, unless by their reckless manner of dealing with the apparatus, or the purchase of such as is inherently dangerous or unusual, they make themselves liable in the same manner that any other public official would be liable for reckless or inconsiderate conduct in the discharge of his official duty. Such in effect was the holding of the court in *Smith v. Zimmer*, 45 Mont. 285, which case is also cited by you. The opinion of this department found in Volume 4, Opinions Attorney General, at page 189, related to "creating and maintaining a play ground for the children of the district", and did not have reference to the purchase of athletic apparatus to be used in connection with the schools, or on the play grounds already provided.

2. This department has also held that under certain conditions the board has the right to permit the use of school property when

not required for the school. Under the conditions, and for the purposes therein expressed, we affirm that decision.

Opinions Atty. Gen. 1905-06, pp. 15, 16.

Yours very truly,

J. B. POINDEXTER,

Attorney General.