

School House Site, Change of Vote on. Vote, For Change of School House Site. School Trustees, Authority to Change School House Site When. County Attorney, Duty of to Institute Action on Request of Private Parties.

In order to change a school house site, a concurrence of a majority of a vote of the district must be obtained.

The duty of county attorney to institute action at instance of private party considered.

June 10, 1916.

Hon. Frank A. Wright,
County Attorney,
Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of the 3rd instant, submitting the questions:

as to the vote required to change a school house site;

also

as to the authority of a school board to sell a school house site;

and also

as to your duty to institute actions upon the request of other parties making accusations against the members of the school board.

It has been held by this department that in order to change a school house site, a concurrence of a majority of the voters of the district must be obtained.

Opinions Attorney General, 1912-14, p. 531; also copy of opinions addressed to Hon. C. A. Linn, County Attorney, on May 15, 1916, herewith enclosed.

The opinions referred to, and Section 1600 of Chapter 76, Laws of 1913, are apparently sufficient to answer your first two interrogatories; that is, a majority of those voting is sufficient to carry any question except that relating to the change of a school house site, and there the vote in favor of the change must be a majority of the voters of a district; and under said Section 1600, the board is not vested with authority to sell a school house site at all, unless the proceedings indicated by that section have first been complied with; but we may also call your attention to the fact that it appears that an election was

held, and for aught we know, it may have been in such form as to the question submitted, to include the permission to the board to sell the old site; and furthermore, if that election is not contested or set aside, it would probably stand as a record by presumption or otherwise, that the authority to change the school site was granted by a majority of the voters of the district, for there is not any presumption that all the voters did not vote. The presumption in fact is rather that they did vote.

I do not understand that it is your duty to institute action against the members of the school board whenever requested so to do by some resident of the district; nor do I understand that it is your duty as county attorney to sign or verify the accusation in writing, indicated by Section 9006, Revised Codes, although you may be requested to do so by some resident of the district. The provisions of that section leaves its provisions open to "any person" who desires to make accusation, and when the accusation is made and filed, the court then has jurisdiction of the case, and the court may then require your services, or may permit the action to be prosecuted by some private attorney. You are the attorney for the school board it is true, but you are not thereby made the public prosecutor of actions against individual members of the school board, unless some accusation is made, either by indictment, complaint or otherwise, and it is likewise true that as county attorney you are charged with the enforcement of the law. Hence, the acts of public officials may be so far a flagrant violation of their duty to the damage of the public, that it would be your duty to compel them to yield obedience to the law. Such matters must be left largely to your judgment, under the facts presented; but as a general rule; the county attorney may stand upon the presumption that public officials have done their duty; for if you were to consume an action against the members of the school board, and the investigation proved the action false, then you should be in the attitude of having taken issue with the official action of an official board, of which, under the law, you are the attorney and advisor.

Yours very truly,

J. B. POINDEXTER,

Attorney General