

**School District, Right to Construct Sewer. Sewer, Right of District to Construct. Bonds, School District Right of to Issue for Sewer. School House, Sewer Part of When Necessary.**

Where a drainage or sewer system is necessary to make effective the building as a school house, and no other means provided, the district may issue bonds for the establishment of a sewer system.

November 25, 1916.

Hon. P. R. Heily,  
County Attorney,  
Columbus, Montana.

Dear Sir:

I am in receipt of your letter of the 18th instant, submitting the question:

"Have the trustees of a school district of the second class

the power to issue bonds for the purpose of constructing a sewer and building walks to serve the present school building?"

That a school district is a creature of the statute, and has not any power except that directly granted, or necessarily included, is elementary. The law relating to the authority of a district to issue bonds in the first instance is contained in Section 2015, Chapter 76, Laws of 1915, and provides in effect that the district may issue bonds for the purchase of a site, building and furnishing school house. Another provision of the law relating to school houses is found in Subdivision 19, Section 508 of said Chapter, which makes it mandatory upon the district to provide suitable out-houses, and the provision of Section 1607 of said Chapter, command the trustees to furnish water supply and toilet accommodations. Proper sanitation is one of the things that is specifically commanded, and the proper disposal of sewage is necessary to that sanitation. There is not any doubt but what a district has the authority to contract for the erection of a school building, and to insert in that contract provisions relative to the erection of toilet accommodations, and for necessary drainage, and to pay for the same from the proceeds derived from the sale of bonds issued under authority of said Section 2015. Neither is there any doubt that a district has the authority to make a second issue of bonds for the erection of school houses, just so it keeps within the statutory limit of indebtedness. Where a drainage or sewer system is necessary to the proper sanitation of the school house, the building in effect is not complete until this system is added. The district then having erected the building, and finding it incomplete, may it now issue bonds to complete that building by the installation of that which is necessary to make effective such building for a school house. It is useless to look for authorities directly in point. The opinion of this department, referred to by you (Vol. 5, Opinions, Attorney General, 250), had reference to the repair of a school house where the repairs amounted in effect to the erection of a new building. Hence, it is not in point, but the statement therein: "it frequently happens that a restriction named in the law is specifically applicable to the Board of Directors, or Trustees, rather than to the people residing in the district," is apropos in this case, and while an opinion of this department is not law, but only expression of a conclusion as to what the law will be if the case ever reaches the court of last resort, yet, I am of the opinion that if this sewer or drainage system is actually necessary, the district may issue bonds to pay the expense thereof, providid it does not now have or cannot in the judgment of the trustees, or of the electors raise the money necessary therefor by taxation, and within the time when the sewer system, as a matter of safety should be completed. If this district is situated within a city or town having a sewer system, then it is quite probable that the connection should be made with the system, rather than to install an entirely new system. In other words, if it is first determined that this sewer is necessary, then it should be installed as expeditiously, and with as little cost as may be to the district. As to the manner of submitting this question to the electors, I will call your attention to the decision of the Supreme

Court in *State ex Rel Bean, v. Lyons*, 37 Mont., 354, which is referred to in the former opinion of this office, mentioned in your letter.

Yours very truly,

J. B. POINDEXTER,

Attorney General.