

**School District, Power of Trustees. School House, Building of Funds, of School District.**

Moneys in the general school fund may not be expended for purposes other than that for which the tax was levied. Ample means are provided for raising money for building and furnishing school houses. Action of Trustees may be ratified, and general fund made whole.

March 25, 1915.

Hon. Herbert H. Hoar,  
County Attorney,  
Sidney, Montana.

Dear Sir:

This office is in receipt of your recent letter setting forth that in S. D. No. 5, Richland County, of which the town of Sidney is a part, there was recently builded a school house, and money was taken out of the general fund to help pay for the building; that there are not sufficient funds remaining to pay the running expenses of nine months' school, as is required by law in districts of the class to which No. 5 belongs, and the question which you desire to have answered is:

Whether the school district may be bonded to replenish the general fund in an amount equal to that diverted therefrom for building purposes, and if it be lawful to do this, whether warrants may be issued in the meantime for current running expenses?

As you indicate, the law contemplates a school term of at least nine months of each year in districts of the first and second classes. In pursuance whereof, superintendents, principals and teachers are usually hired upon entire contracts for the school year, thus making the district liable for salaries for the whole term. Adequate provision is made for raising the necessary revenue for this purpose by taxation, and the moneys thus raised are forbidden by law to be expended for any purpose other than that for which the tax was levied, subject to the exceptions noted in Section 2004 of Chapter 76, Laws of 1913.

In the present instance the school trustees were without authority of law to divert the moneys from the general school fund for building purposes. Ample and adequate means are provided—subject to constitutional restriction as to amount—for the raising of money for necessary building and furnishing of school houses. The ordinary and orderly course was not followed—yet it can be said that the trustees acted in the best interests of the district and were actuated by honorable

motives. The money was expended for a laudable and necessary purpose, such a one as the district might originally have authorized by voting a bond issue. Where such a state of facts exist, the district may ratify the acts of the trustees by voting a bond issue to correct the irregularity (See 35 Cyc, p. '973). In such a case, it is to be assumed the district owes for the school house; that moneys were temporarily diverted from the general school fund to facilitate the construction thereof, and to effectuate the purpose in view. The question, therefore, to be submitted to the voters, would be as provided in Section 2016, Chapter 76, Laws of 1913. The moneys, when raised, would be paid not to the contractor who constructed the building, but into the general fund to place it in statu quo. Thus, there would be done in an indirect way that which is lawful when done directly as pointed out by the statute, and such procedure, when ratified by the district, would be lawful. It is my opinion that if the voters voted a bond issue for building purposes in an amount equal to that diverted from the general funds, warrants may be drawn against such fund when the result is known, for in such case the money in contemplation of the law is restored to such fund to be used for the purposes prescribed by law.

The school laws must of necessity receive a liberal construction, to effectuate the purpose for which they were enacted, namely, the education of our youth, but it must be borne in mind that the board of trustees is one of limited power, and may act only in pursuance of law, to exercise the powers expressly conferred, or which by necessary implication are required to effectuate such purpose. The act of the Board in this instance might originally have been enjoined and the trustees compelled to submit the question of raising the money for building purposes, to the people at an election to be called for that purpose. No such step was taken, yet, as indicated above, the irregularity must necessarily be subject to correction.

Yours very truly,

D. M. KELLY,

Attorney General.