

**High Schools—Trustees, Powers of—Bonds for Buildings
—Levy by Trustees—Warrants.**

When a bond issue has been voted for the erection of a high school building and furnishing the same, the Trustees cannot make estimates for the high school tax levy to include plumbing, wiring, heating apparatus and other items necessary to furnish the building, the same being included in the bond issue. Nor can they use funds on hand for furnishing the high school buildings. Trustees can only issue warrants not in excess of funds on hand, or available through levy of taxes for current year or the issuance of bonds.

January 11, 1917.

Hon. Fred W. Schmitz,
County Attorney,
Townsend, Montana.

Dear Sir:

I have your letters of January 5th and 8th, from which it appears that at the November election it was voted by the electors of your county to issue "bonds in the amount of Forty Thousand (\$40,000.00) Dollars, for the purpose of purchasing a school site, **erection of a High School building and furnishing the same * * ***" It further appears that there will be about \$4,000.00 in the general high school fund at the end of the present school year, and that there is no site to purchase. You have submitted the following questions:

1. Can the Trustees let a contract for the construction of the building for substantially the full \$40,000.00, and then at their regular April meeting include in their estimate to the County Commissioners any amount for heating apparatus, plumbing, wiring and other incidentals necessary to make a full completed building?
2. Can the High School Trustees use this \$4,000.00 in furnishing the building?
3. Can the Trustees issue warrants for the purpose of having them registered?

1. Section 2108 of the School Law, as amended by Chapter 115 of the 1915 Session Laws provides:

"At the regular April meeting or at some succeeding meeting, called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for the payment of teachers' wages, and for payment of contingent expenses and they shall present to the board of county commissioners a certified estimate of the rate of tax to raise the amount desired for such purposes, and the board of county commissioners must levy such tax as other county taxes are levied. But in no case shall the tax for such purpose exceed in one year the amount of five mills on the dollar on the taxable property of the county."

But by Section 2111, if bonds are issued, the trustees in making estimates for the maintenance the high school, shall not include estimates for building or other purposes for which the said bonds are issued.

Section 2109 provides for the issuance of bonds for the purpose of erecting a high school building, and that the county commissioners "shall proceed to submit the question of issuing said bonds to the qualified electors of the county in the manner provided by law for the issuance of other county bonds." See Political Code, Section 2894 (27), 2905 as amended by Chapter 32 of 1915 Session Laws and 2933 to 2938 inclusive.

By Section 2935 notice of the election **clearly stating the amount to be raised, and the object of the loan,** must be given. And by Section 2938 the ballots shall have printed thereon places to vote "For" and "Against" said bonding proposition, "stating it and the terms thereof explicitly and at length."

In the case submitted the amount of the proposed bond issue, rate of interest and time redeemable are stated and the object is "for the purpose of purchasing a school site, erection of a high school building and furnishing the same." Would this bond issue for erecting a high school building and furnishing the same include the plumbing, wiring, installing heating apparatus, and other incidentals necessary for a completed building? I am of the opinion that these items would be included and that the trustees cannot include any sums for these several items in their estimates to the county commissioners at the April meeting.

When the electors of Broadwater County voted a \$40,000.00 bond issue for a high school and for furnishing the same, they did not vote \$40,000.00 for a mere shell and then submit themselves to be taxed for \$9,999.00 to furnish and equip the building. They voted for a high school building properly heated, ventilated, and furnished so that a high school could be maintained therein.

See *Carlson v. City of Helena*, 39 Mont. at 107.

Nelson v. Spears, 16 Mont. 349.

Our own Supreme Court in *Morse v. Granite County*, 44 Mont. on page 91 uses this language:

"The site and the furnishings are both necessary parts of the general purpose to provide the county with a courthouse, because not only must the building be suitable in structure and arrangement to serve the public as a courthouse, but it must also be so furnished and equipped that it will be useful for that purpose."

2. The express restrictions upon the trustees in connection with this fund on hand are contained in Section 2104 (7b) of the School Law, Chapter 76, Laws of 1913, which are that "they shall not, however, make any purchase or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand or available through the levy of taxes for the current year, or the issuance of bonds," and in Article XIII, Section 5 of the Constitution: "No county shall incur any indebtedness or liability for any single

purpose to an amount exceeding ten thousand (\$10,000.00) dollars without the approval of a majority of the electors thereof, voting at an election to be provided by law." But in view of what I have said, in connection with the bond issue and its purpose, I am of the opinion that the trustees should not use any of the funds now on hand in furnishing the high school building. When it was voted to bond the county in the sum of \$40,000.00 for a high school building, and furnish the same, it was not contemplated that all the money remaining to the credit of the general high school fund should also be used in constructing and furnishing this high school building.

3. The trustees can issue warrants within the limitations prescribed in Section 2104 (7b), not in excess of the amount of funds on hand or available through the levy of taxes for the current year, or the issuance of bonds already voted on. By Section 2949 if the high school fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration. But this does not enlarge the powers of the trustees to make any contracts or assume any obligations beyond these limitations expressed in Section 2104 (7b).

Respectfully,

S. C. FORD,

Attorney General.