

School Districts—Surplus in General Fund—Buildings.

A surplus in the general school fund to the credit of a school district, after providing for the expenses of not less than nine months school, on a vote of the qualified electors of the district, may be used for the purpose of erecting new buildings.

May 16th, 1918.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have requested my opinion upon the question of whether or not money in the general fund of a school district may be used for the erection of new buildings.

Section 2002 of the School Law provides for the levy of a special school tax to furnish additional school facilities for the school district. By Section 2004, the trustees of a school district can use school moneys for the various purposes authorized by the act and for no other purpose, except that any surplus in the general school fund to the credit of the district, after providing for the expenses of not less than nine months school, on a vote of the qualified electors of said district, may be used for the purpose of retiring bonds and improving buildings and grounds. Section 508 of the School Law relates to the general powers of the Board of Trustees and by Paragraph 8, the school board has power to build school houses and to purchase school sites, except that in districts of the third class they shall not build a school house or locate a school site unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the Clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place and purpose of such election.

It would thus appear that it was the intention of the legislature that in case there is a surplus in the general fund to the credit of the district, after providing for the expenses of not less than nine months school, the district may use such surplus for the purpose of building school houses, but that such surplus should not be used for that purpose by the trustees unless directed so to do by the electors at an election, such election to be called and held in the same manner as the annual school election. Section 2015 of the School Law provides for the issuing of bonds for the erection of school houses, but it cannot be presumed that in case a school district had plenty of money with which to build a school house that it must borrow this money for that purpose thru a bond issue. The following language, in the case of *Reid vs. Lincoln County*, 46 Mont. 31 at 57-8, 125 Pac. 429, supports this view:

“Unless expressly or impliedly prohibited from so doing by other constitutional declarations, the people of the county may spend their money for any object which they may desire. The power of the Board of County Commissioners is limited, but that of the people themselves is unlimited, save as heretofore suggested.”

I am therefore of the opinion that money in the general fund of a school district may, under the conditions above mentioned, be used for the purpose of the erection of new buildings.

Respectfully,

S. C. FORD,

Attorney General.