

High Schools, District and County, Levy for Building— Sinking Fund.

Trustees of school districts of second class may rebuild or remodel a school building and levy a special tax therefor without first submitting the question to a vote of the district. A sinking fund can only be used for the payment of principal and interest on bonds. Such sinking fund is an offset to bonded indebtedness in computing constitutional limit of indebtedness. General school fund may be used for building purposes, after providing for expense of school, only after electors have so voted.

January 25, 1917.

Hon. J. B. Selters,
County Attorney,
Big Timber, Montana.

Dear Sir:

I have your letter of January 15th, together with letter of even date to the school trustees of District No. 1, Sweet Grass County. It appears that this district is a district of the second class having a bonded indebtedness of \$8000.00 and a sinking fund to pay said bonds of \$6300.00, and there is a general fund of about \$5700.00. The assessed valuation of the district is \$670,000.00, and the trustees desire to rebuild or remodel the school building at a cost of from \$15,000.00 to \$19,000.00.

The following questions were submitted:

1. Can a levy be made for the purpose of such rebuilding or remodeling without first submitting the question to the qualified voters of the district?
2. What procedure would be followed in giving notice of election?
3. Can any of the sinking fund be used for the purpose of rebuilding or remodeling?
4. Can any portion of the general fund be used for such purpose without first submitting the question to the voters of the district?

1. I agree with the opinion expressed by you that the trustees of a school district of the second class may erect, rebuild or remodel a school building and pay for it by means of a special tax without first submitting the question to the qualified voters of the district. By the provisions of subdivisions 7 and 8 of Section 508 of the school law, Chapter 76 of the 1913 Session Laws, the board of trustees have power to repair school houses and to build or remove school houses and to purchase or sell school sites, provided that in districts of the **third** class they shall not rebuild or remove school houses unless directed so to do by a majority of the electors of the district. Formerly school trustees could build or remove a school house only when directed by a vote of the district so to do. Section 875 (6) of the Revised Codes.

This Section was held in *State ex rel. Bean v. Lyons et al.* 37 Mont. at 362, not only as a grant of power to the school board, but also as a limitation upon its power, and that they cannot build or remove a school house without a vote of the district. But this section was amended so that this restriction only applies to districts of the third class.

2. I agree with the opinion expressed by you that all school elections should be held in the manner prescribed for the election of school trustees, Section 2016, and 502 (2b), Chapter 76, laws of 1913.

3. Sections 2019 and 2020 of the School Law provide for the creation of a sinking fund for the purpose of redeeming bonds and all moneys collected for this purpose must be paid to the county treasurer to the credit of the district and kept in a separate fund to be used for the payment of principal and interest on said bonds, and for no other purpose. Therefore this sinking fund cannot be used for the purpose of rebuilding or remodeling a school house.

In case, however, this school district should desire to issue further bonds, in computing the amount of indebtedness now existing against the district, the sinking fund would be a proper off-set as against the existing bonds, leaving the present bonded indebtedness of this school district, under such computation, only \$1700.00.

McQuillan Mun. Corp. Sec. 2238.

Stone v. Chicago, 207 Ill. 492, 69 N. E. 970.

Kelly v. Minneapolis, 63 Minn. 125, 65 N. W. 115, 30 L.R.A. 281.

Schuldice v. Pittsburg, 234 Pa. St. 90, 82 Atl. 1125.

Eauclaire v. Water Company, 137 Wis. 517, 119 N. W. 555.

Williamson v. Aldrich, 21 S. D. 13, 108 N. W. 1063, 28 Cyc. 1584.

Graham v. Spokane (Wash.), 53 Pac. 714.

4. I agree with your opinion that a portion of the general school fund, after providing for the expense of not less than nine months' school, may be used for the purpose of rebuilding or remodeling the school house, but only after the qualified electors of the district have voted upon the proposition. This use of the general school fund is authorized by Section 2004 of the school law with the limitation, however, that the qualified electors of the district vote upon the matter.

Respectfully,

S. C. FORD,

Attorney General.