

School Funds, Transfer Of—Fund, General, to Building Fund—High School, Not Entitled To.

Where nine months' school has been provided for, a transfer of funds from the general to the building fund may be made upon order by vote of the district.

High school is entitled to no part of assessment levied for building fund.

Oct. 4, 1919.

Mr. J. E. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:

I am in receipt of your communication regarding transfer of funds from the general school fund of a district to the building fund. It appears from your letter answering that of the County Treasurer, a copy of each being attached, that the transfer of funds was ordered on a vote of the district.

I agree with your contention; the statute, Section 2004, General School Laws, is very plain that any surplus may be used for building purposes on a vote of the district, *after providing for the expenses of nine months' school*. The only question then is as to what constitutes provision for nine months' school.

Whether the funds now to the credit of the district are more than sufficient to provide for nine months' school does not appear, but manifestly this is a question to be determined by the school board. It does not appear that they had ordered the transfer of six thousand dollars placed to the credit of "building fund," and that two thousand dollars remained in the general fund. Suppose this vote had been taken some time in December of 1918, after taxes had been paid, and they would have set aside funds for nine months' school, this would carry them up to the taxpaying period of the present year, while to require them at this time to reserve sufficient funds for nine months' school would in the course of two months or two months and a half (the taxes for this year then having been paid), provide sufficient funds for fifteen or sixteen months' school. There is no question that they could then hold another election and appropriate the surplus to the building fund, but at that time they would probably be unable to undertake building operations.

Under the provisions of Section 2002, the trustees are required to certify to the County Commissioners the amount of money needed by the district over and above the amount apportioned to it by the County Superintendent under the provisions of Section 2003 to maintain the schools of the district, to furnish additional school facilities, and to furnish such appliances and apparatus as may be needed, and in districts of the first and second classes to maintain a school of at least nine months in each year. Reading this with Section 2004, it appears that what was intended was that the general school fund should not be reduced by diversion to building or other purposes without having sufficient for nine months' school in each year. If the provisions of Section 2002 have been complied with and taxes have been levied to meet the requirements as therein specified, I am of the opinion that this can be taken into consideration and if there is sufficient funds left to care for expenses until this is available, the requirement of providing for nine months' school in each year has been met and the remainder can be devoted to building purposes.

I agree with you in answering the second question—only the moneys collected for maintenance can be shared in by duly accredited high schools other than the county high school. They are entitled to no part of the assessment levied for building fund.

Respectfully,

S. C. FORD,

Attorney General.