

Schools—School Trustees, Powers Of—Buildings, Payment For From General School Fund.

The school trustees are without power to authorize the expenditure of the whole of the general school fund for building purposes, and the treasurer may be enjoined from the payment of warrants against the general fund, when it would be exhausted thereby.

November 20, 1919.

Mr. Ivan E. Merrick,
County Attorney,
Mineral County,
Superior, Montana.

Dear Sir:

It appears from your letter to this office, dated November 11, 1919, that the school trustees of District No. 1 for Mineral County, have built an annex to their high school and that they are paying for the same by warrants on the general school fund.

It further appeared from conversation had with you in this office relative to this matter that these warrants would entirely exhaust the general fund, so that the payment thereof would necessitate the closing of school for want of funds. You wish to know whether these warrants can be legally paid out of the general school fund.

Section 2004, General School Law, provides: "County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this Act and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, *after providing for the expense 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 or erecting school buildings, a teacherage or barn."

This section has been construed by this office as authorizing an expenditure of the surplus only, after first providing for nine months' school upon a vote of the electors of the district. This vote could in any event only authorize the expending of the surplus for the purposes therein stated and could in no event authorize the expenditure of the entire general school fund.

Chapter 93 of the Session Laws of 1917, Section 1, authorizes the trustees of any school district to raise money by taxation in excess of ten mills for the purpose of maintaining the schools of the district or building, altering, repairing or enlarging any school house or houses of said district or for furnishing additional school facilities for said district or for building and equipping heating plants, or for any other purpose necessary for the proper operation and maintenance of the schools in said district, upon submitting the matter to a vote of the district at a special election called therefor. This, however, is in addition to the general school levy of ten mills.

Section 2004 further provides that if any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the re-payment of such sum and a suit to recover the same may be brought by the county attorney or upon his refusal by any tax paying elector of the district.

I know of no way in which the trustees in this matter could; therefore, be aided by a vote of the district as there is no provision of law authorizing the expenditure of the whole general school fund for building purposes.

I am not prepared to say that the treasurer would be liable on his official bond for the payment of warrants regularly issued by the board. Under subdivision 4 of Section 2010, he is authorized to pay all warrants drawn on the county or district school money in accordance with the provisions of this chapter. I am of the opinion, however, that an action would lie to restrain him from paying these warrants.

Respectfully,

S. C. FORD,

Attorney General.