

Attorneys—County Attorneys—School Districts—School Trustees—Special Counsel.

Boards of school trustees are without authority to employ special counsel to assist the county attorney in defending court proceedings to which the school district is a party.

Howard A. Johnson, Esq.
County Attorney.
Boulder, Montana.

March 28, 1925.

My dear Mr. Johnson:

You have submitted for an opinion the question of the power of a school district to employ an attorney to represent the district in a mandamus suit.

Section 1328, R. C. M. 1921, provides that "the county attorney shall be the legal adviser of the county superintendent and of school trustees and shall prosecute and defend all suits to which a district may be a party."

The question of the authority of boards of county commissioners to employ special counsel to represent a county in a civil case has several times been before this office. In an opinion of former Attorney General Kelly, volume 5, opinions of the attorney general, page 426, it was held that under subdivision 15 of what is now section 4465, R. C. M. 1921, county commissioners may employ special counsel to represent the county in civil cases. I find, however, no such general authority given to boards of school trustees. It is well settled that school boards like all other public officers may exercise only such powers as are expressly conferred upon them by statute or as are necessarily incident to the exercise of powers expressly conferred.

In the absence of any statute authorizing school boards to employ special counsel to represent the district, and having in mind the provisions of section 1328, supra, it is my opinion that boards of school trustees are without authority to employ special counsel to assist the county attorney in representing the school district in a mandamus suit. Your letter does not present any exceptional state of facts such as might reasonably take the case out of the general rule above announced. In the absence of any such special circumstances my conclusion is as above stated.

Very truly yours,

L. A. FOOT,
Attorney General.