

High Schools—Repairs — Bids—School Trustees—School Buildings.

There is no duty imposed by law upon the board of trustees of a county high school to advertise for bids when repairing county high school buildings inasmuch as neither Section 1016 R.C.M. 1921, nor 1301 R.C.M. 1921, applies to trustees of county high schools.

Dwight N. Mason, Esq.,
County Attorney,
Missoula, Montana.

August 5, 1929.

My dear Mr. Mason:

You inquire whether the Missoula county high school board may enter into contracts for the repairing of county high school buildings without first advertising in a newspaper for two weeks asking for bids to perform such work.

Section 1271 R.C.M. 1921 as amended by Chapter 127, Laws of 1923, and by Chapter 48, Laws of 1929 (subdivision 8 thereof) authorizes "the county high school board to provide, by purchase or otherwise, for school books, school furniture, repair of school buildings, furnishings or equipment, and for other things needed in the schoolhouse or on the school grounds or for the use of the school board."

There is no other statutory provision upon the subject which could be held to prescribe any limitation or qualification upon this power unless it be Section 1016 R.C.M. 1921, reading as follows:

"It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing,

repairing, or other work, for the benefit of the district, where the amount involved is two hundred and fifty dollars, or more, without first advertising in a newspaper published in the county for at least two weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids."

It will be observed that this section refers to the letting of contracts by the board of trustees for building, furnishing, repairing or other work "for the benefit of the district." A county high school building is not the property of a school district. A county high school is a county institution, and its trustees are a county agency. The high school property is county property and any obligation incurred in connection therewith is a county obligation. (*Panchot vs. Leet*, 50 Mont. 314, 146 Pac. 927). The repairing of the county high school building would not be for the benefit of a school district, but for the benefit of the county. It is apparent, therefore, that this section does not apply to trustees of a county high school but applies only to trustees of school districts and therefore would constitute no limitation upon the power of the county high school board under Section 1271 R.C.M. 1921, as amended.

Subdivision 8 of Chapter 1271 was first enacted in 1923 as an amendment to that section. It is therefore a later enactment than Section 1016 R.C.M. 1921, and if the legislature had intended that a similar qualification or limitation should apply to county high school boards as is provided by said Section 1016 for school district trustees it seems that the legislature would have incorporated such a provision in Subdivision 8 of Section 1271 at the time it was inserted in that section by the amendment of 1923, either directly or by reference to said Section 1016.

Neither do I believe that Section 1301 R.C.M. 1921 is a limitation upon the county high school board. This relates solely to a joint board composed of the county high school board and the board of trustees of the school district in which city schools are located when there are fewer than nine hundred school children enrolled in the county high school and the city schools, and, as I understand it, has no application in your case. Even though it had, I do not believe that this section would be a limitation upon the county high school board as to the county high school building which is the property of the county, the section evidently referring only to the functioning of the county high school and city schools as educational institutions rather than to the construction, repair and maintenance of the buildings themselves.

It is therefore my opinion that the county high school board of Missoula county is not required by law to first advertise for bids before it may enter into contract for the repairing of the high school building.

Very truly yours,

L. A. FOOT,
Attorney General.