High Schools—High School Board—Powers—Dormitories.

Under the facts stated in the opinion the county high school board is without power to rent rooms in the dormitory to private persons not connected with the high school, the power to rent school buildings for public entertainment being a limitation upon, as well as a grant of power to, the school board.

Seth F. Bohart, Esq., August 9, 1929.
County Attorney,
Bozeman, Montana.

My dear Mr. Bohart:

You have submitted to this office the following statement of facts:

The county high school board of Gallatin county purchased what was known as the Y. M. C. A. building in Bozeman as a gymnasium and dormitory. At the time of the purchase certain persons rented rooms in said building and these persons together with other persons have since continued to rent the said rooms from the high school board and to occupy them as sleeping quarters and pay reasonable compensation therefor to the said high school board. The building at the time of its purchase contained more rooms than were necessary for the accommodation of students at the county high school and this situation still exists. At no time have these rooms which have been rented to persons who are not students of the high school been needed for use by the students and they are therefore surplus rooms. The question has arisen whether or not it is within the legal powers of the county high school board to rent these rooms to these persons who are not students at the high school and who have no connection with it. The high school board does not hold out these rooms as being generally for rent. The board does not rent them to transients but only to people who are more or less permanently situated in Bozeman, such as teachers at the agricultural school and other persons whose occupations make them more or less permanent residents of Bozeman.

Unquestionably, it would be to the advantage of the high school if it could rent the surplus rooms as it has been doing and thus acquire

revenue from that part of the building which would evidently stand idle if the rooms were not rented to the persons mentioned. However, the question is one of power and not of policy. (McClure vs. Board of Education, 176 Pac. 711). The powers of the board of trustees of county high schools are set forth in Section 1271 R.C.M. 1921 as amended by Chapter 48, Laws of 1929. The only power mentioned in said section with reference to renting buildings or portions of buildings by the county high school board is found in Subsection 9 of said Chapter 48, which reads as follows:

> "To rent, lease and hire such halls, gymnasiums and buildings and portions of buildings as may be suitable for public entertainments to such persons, associations or corporations as the board may deem proper and to collect from such persons, associations or corporations renting and leasing such buildings or portions thereof, such charges as may be fixed by the Board and deposit such rent with the County Treasurer to the credit of the High School district."

It will be observed that the power to rent, lease and hire the halls, gymnasiums and buildings and portions of buildings under the control of the high school board is confined to the purpose of holding public entertainments. The Montana Supreme Court has held that statutes granting and defining powers of municipal and quasi-municipal bodies such as school districts will be construed not only as a grant of power to such board but also as a limitation thereon, both as to its extent and to the mode of its exercise.

Keeler Bros. vs. School District No. 3, 62 Mont. 356;

State ex rel. Bean vs. Lyons, 37 Mont. 354.

As the county high school property is county property the rule that when there is a fair and reasonable doubt as to the existence of a particular power it must be resolved against the county, has application. This rule was announced by our Supreme Court in the case of Sullivan vs. Big Horn County, 66 Mont. 45.

It would therefore appear that when the legislature inserted said Subdivision 9 into Section 1271 R.C.M. 1921, by the amendment of 1929, by which these buildings might be rented or leased for public entertainments the legislature not only granted this power but limited it to the purpose set forth in the amendment.

The fact that adequate compensation is paid by these persons for the use of the rooms has no bearing upon the legal right of the board to rent them. As was said by Justice Brewer in Spencer vs. Joint School District No. 6, 15 Kan. 259:

> "The public schools cannot be used for private purposes. The argument is a short one. Taxation is invoked to raise funds to erect the building; but taxation is illegitimate to provide for any private purpose. Taxation will not lie to raise funds to build a place for a religious school, a political society, or a social club. What cannot be done directly cannot be done in-

> directly. As you may not levy taxes to build a church, no more may you levy taxes to build a school house and then lease it for a church. Nor is it an answer to say that its use for school purposes is not interfered with, and that the use for the other purposes works little, perhaps no immediately-perceptible injury to the building, and results in the receipt of immediate pecuniary benefit. The extent of the injury or benefit is something into which the courts will not inquire. The character of the use, is the only legitimate question * * * ."

The Justice then says that to cite all the authorities in support of his decision would be to "travel over a road already worn and dusty." The legislature will be presumed to have been familiar with the court decisions of this state relative to the limitations upon powers of such boards and with the general law that Mr. Justice Brewer pronounced as so well established, and therefore there is added reason to believe that when the legislature limited the right to rent or lease these school buildings for the purpose only of public entertainments that they intended that they should not be leased for any other purpose, and that the courts would construe the amendment as a grant for the purpose mentioned and a limitation as well.

In fact, in view of Section 11, of Article XII of our Constitution, which provides that taxes shall be levied and raised for public purposes only it is questionable whether the legislature could have gone further than it did by the amendment and permitted the use of the building that was acquired by taxation for any other than public purposes.

You have also inquired if the board could lease the unused part of the building to some other person who could sublet it to these tenants. I am of the opinion that this could not be done for the same reasoning applies to this question as applies to the first one.

It is therefore my opinion that no legal authority exists by which the county high school board can lease the surplus rooms in the dormitory to the persons mentioned in the above statement of facts.

Very truly yours,

L. A. FOOT,
Attorney General.