

**School Districts — Surplus Funds — High School Site —
Vote.**

School site may be purchased out of surplus remaining after nine months school, upon vote of district.

Mr. Walter R. Knaack,
County Attorney,
Shelby, Montana.

June 19, 1931.

My dear Mr. Knaack:

You request an opinion whether a school district is authorized to purchase suitable ground upon which to construct a high school building out of the surplus remaining in the general fund after providing for nine months school.

School district No. 14 of your county held an election on the matter, at which election a majority of the qualified electors authorized the surplus to be used for purchasing a school site. The question is whether a vote of the qualified electors authorizes the use of the surplus for such a purpose.

Section 1205, R.C.M. 1921, provides that "county school moneys may be used * * * 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 such district, after providing for the expenses 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."

It is to be observed that the purchase of ground for a school site is not among the purposes expressly enumerated in this section.

The district has already authorized bonds to be issued for the purpose of constructing a high school building. Under section 1219, et seq. a special levy in excess of ten mills may be made upon a vote of the taxpaying freeholders therein for the purpose of furnishing additional school facilities for said district, for building and equipping heating or other plants, or for any other purpose necessary for the proper operation and maintenance of the schools in said district, including building, altering, repairing, or enlarging any schoolhouse or houses of said district.

Under this section unquestionably a special levy can be made when approved by the electors for the purpose of purchasing a school site.

Under subdivision A of section 1 of chapter 147, laws of 1927, the board of trustees of any school district are vested with power to issue bonds for any one or more purposes, (a) for the purpose of building, enlarging, altering, repairing, or acquiring by purchase one or more school houses in said district; furnishing and equipping the same, and purchasing the necessary lands thereof.

Under this subdivision the purchase of land for a school site is included in the purpose with the building of the schoolhouse. In fact, there is no question that bond money could be expended for the purchase of a site where bonds have been issued for the purpose of building a building, for it necessarily follows that no building could be constructed without a site upon which to construct it. It is therefore considered as a part of the purpose of building a school house.

Under section 1205, R.C.M. 1921, surplus money may be used for the purpose of retiring bonds or erecting school buildings, a teacherage or barn. The bonds retired with such surplus, or a part of the proceeds of them, might have been used for the purpose of purchasing the site upon which the building was erected, or in case a building was authorized a site could have been purchased as a part of the building construction costs. There is only one purpose for which a school site would be purchased and that is for the purpose of erecting a building thereon, either immediately or at some future time.

It is therefore my opinion that surplus funds, after providing for nine months' school, upon a vote of the qualified electors of the district, can be used for the purpose of purchasing a school site.

In this particular case the site, of course, is being purchased for

the construction of the building authorized by an issue of bonds. As before stated, the site could be purchased out of the bond issue and the bonds can be paid off out of the surplus, and it would seem to follow that it would make no difference that the money was used for the purchase of the site in the first instance.

Very truly yours,

L. A. FOOT,

Attorney General.