

Opinion No. 99**Schools — School Trustees — Sale of School Property—County Commissioners—Meetings—Waiver of Notice.**

HELD: In the absence of procedure fixed by statute for sale of school property, trustees may select the mode reasonably well adapted to the accomplishment of the end.

Posted public notice required by Section 4462, amended Laws 1929, Chapter 35, is for benefit of public and cannot be waived by commissioners.

March 3, 1933.

You have requested my opinion on the following questions:

"1. Under the provisions of our statute in regard to the electors of a school district authorizing the trustees to sell or dispose of a school building, may the trustees make such sale in any manner they think most advantageous?"

"2. Can the board of county commissioners, under the provisions governing extra or special sessions of the board, as provided in Chapter 35, Laws of 1929, waive the notice required by that statute under any circumstances?"

"3. If a legal meeting of the board of county commissioners cannot be held until public notice has been posted for two days as required by the session laws referred to in question 2, how can a board legally act on matters that require immediate attention?"

I find no provision in the statutes which prescribes the procedure to be followed by school trustees in selling or disposing of school buildings. In the absence of such specific provision, I am of the opinion that the trustees should be left free to use their own discretion in selecting the mode of procedure and that their action would be upheld if the mode of procedure is reasonably well adapted to the accomplishment of the end. It would seem that the rule announced by the Supreme Court in the case of *Morse v. Granite County*, 44 Mont. 78, should be applicable. The court, in speaking of the powers of county commissioners, said on page 89:

"Therefore, its board of commissioners—its executive body—is a body of limited powers and must in every instance justify its action by reference to the provisions of law defining and limiting these powers. (Section 2894; *State ex rel, Lambert v. Coad*, 23 Mont. 131, 57 Pac. 192). If, however, there is no question of the existence of the power to do the act proposed, and the mode of its exercise is not pointed out, the board is left free to use its own discretion in selecting the mode it shall adopt or the course it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adapted to the accomplishment of the end proposed."

While no specific procedure has been fixed by statute, it might be advisable to suggest to the school trustees that where the value of the property justified, it would be good practice to advertise and sell such property at public sale. In a good many instances, I presume the property to be sold is of such little value that the board would not feel justified in expending a great deal of money for advertising or appraising the property.

As to whether or not the county commissioners may waive the notice of special meeting required by Section 4462 as amended by Chapter 35, Laws of 1929, I am of the opinion that this notice was intended to be for the benefit of the public and, therefore, it cannot be waived. There seems to be some confusion of authorities in this connection. When personal notice to the members of the board of a proposed special meeting is provided, I am of the opinion that such notice may be waived by the members of the board if they meet voluntarily and unanimously agree upon holding a special session. See: *Morse v. Granite County*, supra; *Reid v. Lincoln County, et al*, 46 Mont. 31; 15 C. J. 464, Section 115.

I do not feel that I should render an opinion in regard to your third question as to how the board can legally act on matters that require immediate attention, without knowing all of the facts pertaining to the business to be acted upon and the emergency. It is possible that in extremely urgent cases the board might take some action

which later might be ratified at a meeting called after giving the required two days' posted public notice.