

Opinion No. 105.**Schools—Architects Fees—High
Schools—Building Fund.**

HELD: 1. Architects fees, for building supervision of a high school, are a proper charge against the general fund of the district if provision has been made in the budget.

2. A school board may levy and collect a building fund to erect new buildings or to improve existing buildings providing they do not exceed the legal millage levy or the constitutional limitation of indebtedness.

May 17, 1935.

Mr. C. W. Demel
County Attorney
Billings, Montana

You have asked us to answer the following questions for you:

"1. Can the board expend money from the general fund for architect fees in connection with the extension and remodeling of the high school building, which consists of additional class rooms for the high school and an auditorium and gymnasium for both high school and adjacent grade buildings where the sum available from proceeds of sale of bonds is insufficient to complete the project; and provided that any such sum would be included in the budget for the ensuing fiscal year?

"2. Does Section 1205 of the School Laws apply to expending any portion of balance remaining in a general fund on June 30 of the fiscal year, which expenditure has not been included in the current fiscal year

budget for the purpose of making up any deficiency between cost of building and proceeds of bonds.

"3. Is there any provision whereby a school board may levy and collect a building fund for the erection of new buildings or for extensions and remodeling of existing buildings?"

"4. Is it permissible to use elementary school funds for the purpose of making up the deficiency as noted in question one for the construction of an auditorium to be used jointly by high school and elementary school students?"

1. We are not aware of any statute of this state which provides that the payment of an architect's fees for building supervision must be made a charge against the building account. We believe that such fees are a proper charge against the general fund of the district and may be paid out of the district funds, if provision has been made for their payment in the annual budget. (*Wyckoff v. Force*, 214 Pac. 489; see also Volume 10, Report and Official Opinions of Attorney General, p. 135.)

2. Your second question has been answered in the negative by opinion No. 534, Vol. 15, page 369.

3. The answer to your third question is "yes", provided the amount levied is within the millage levy permitted by Section 1203 R. C. M. 1921, as amended, and does not exceed the constitutional limitation of indebtedness imposed by Section 6 of Article XIII of the Constitution of the State of Montana. Among the provisions which may be applicable, are Section 1208, R. C. M. 1921; Section 1219, R. C. M. 1921, as amended by Chapter 120, Laws of Montana, 1925; Chapter 146, Laws of Montana, 1931; Chapter 178, Laws of Montana, 1933, as amended by Chapters 151 and 193, Laws of Montana, 1935.

4. The transfer contemplated in the fourth question submitted by you, is prohibited by Section 15, Chapter 178, Laws of 1933 (Sec. 1263.15, R. C. M. 1935).