

Opinion No. 257.

Schools—School Land—Oil & Gas.

HELD: A board of school trustees may not hold land for the purpose of prospecting, exploring and drilling for gas, developing gas wells and removing gas therefrom.

March 2, 1936.

Mr. Fred C. Gabriel
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On behalf of the school board of Malta you have requested an opinion as to the authority of the City of Malta to own and operate its own gas

system. You state that the city contemplates drilling a well on the school property. It is assumed that you mean that it is contemplated that the wells from which the city hopes to obtain its supply of natural gas for the system will be drilled on property owned by the school district which embraces the City of Malta and used as a site for a district school house.

Under the provisions of Chapter 128, Laws of 1927, I believe there is no doubt that the city has the power and authority to construct, purchase or develop an adequate supply of natural gas and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of said city or vicinity and to contract an indebtedness, within constitutional and statutory limitations, to pay for the same.

However, the problem with which your local school board is probably more concerned is whether or not it has the authority to permit the drilling of a test well on school property and, in case gas is produced in sufficient quantities, to lease or otherwise contract for the use of the property for the purpose of extracting gas therefrom. It is well established that although school districts are public corporations their powers are very limited and they can exercise none except such as are conferred by the law creating them, either expressly or by fair implication. (*Jay v. School District No. 1*, 24 Mont. 219, 232, 61 Pac. 250; *Finley v. School District No. 1*, 51 Mont. 411, 415, 153 Pac. 1010; *State ex rel School Dist. No. 4 v. McGraw*, 74 Mont. 152, 156, 240 Pac. 812). The board of school trustees constitutes the board of directors and managing officers of such corporation and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred. (*McNair v. School District No. 1*, 87 Mont. 423, 425, 288 Pac. 188, 69 A. L. R. 866; *Keeler Bros. v. School District No. 3*, 62 Mont. 356, 361, 205 Pac. 217; *State ex rel Bean v. Lyons*, 37 Mont. 354, 362, 96 Pac. 922.)

Section 1015, R. C. M. 1921, as amended by Chapter 122, Laws of 1931, provides in Subdivision 7 that

every school board shall have the power and it shall be its duty "to repair and insure school houses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and other buildings and parts thereof for such time and rental as the board may designate. All rentals shall be paid to the County Treasurer for the credit of the school district." Subdivision 12 of Section 83, Chapter 148, Laws of 1931, gives the same power and authority to boards of trustees of every county high school and every school district maintaining a district high school. By their terms these provisions limit trustees' powers to lease, rent and let school property to school halls, gymnasiums, buildings and parts thereof.

Neither Section 1008, R. C. M. 1921, relating to the powers of school trustees over property generally nor Subdivision 9 of Section 1015, R. C. M. 1921, as amended, making it a power and duty of school boards "to hold in trust for their districts all real or personal property for the benefit of the schools thereof" can be said to authorize the use of school property for the production of gas.

As to school sites, Subdivision 8 of Section 1015, R. C. M. 1921, as amended, gives school boards the power "to purchase, acquire, sell and dispose of plots or parcels or lands to be used as sites for school houses, school dormitories and other school buildings and for other purposes in connection with the schools of the district; . . . provided they shall not build or remove school houses or dormitories nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose. . . ."

Section 1173, R. C. M. 1921, provides in part as follows: "The school site shall be selected in a place that is convenient, accessible, suitable, and well drained; provided, that in districts of the first and second class, the site shall be not less than one-half of an average city block, and in districts of the third class shall contain not less than one acre."

I am of the opinion that in view of the foregoing decisions and statutes

boards of school trustees do not have the authority to acquire property except for purposes in connection with the schools of the district and that land may not be held by a school district for the purpose of prospecting, exploring and drilling for gas, developing gas wells and removing gas therefrom. However, if a sale of part of the property of a school district would not reduce the area of the school site remaining to less than the minimum required by Section 1173, R. C. M. 1921, then, perhaps, the school board could upon being "directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose" dispose of that portion of the school site upon which the proposed well would be drilled.