

Opinion No. 300.**Schools—High Schools—Budget—
Transfer—Building Fund.**

HELD: Funds remaining in the High School General Fund of a school district maintaining a high school may not by a vote of the electors of the district, be transferred to the building fund to be used for building purposes, but such funds must be used for the purposes of the next ensuing budget.

June 6, 1936.

Miss Elizabeth Ireland
Superintendent of Public Instruction
The Capitol

You have requested my opinion whether a school district maintaining a district high school may transfer the surplus from the High School General Fund to the High School Building Fund. We have a request for an opinion upon the same subject from Lee Butler Farr, County Attorney of Richland County.

It appears that three school districts maintaining high schools in Richland County have built up a considerable surplus in their High School General Fund. The trustees of these districts now desire to make a transfer from the High School General Fund to the High School Building

Fund. The crowded condition of buildings in those districts makes it desirable to construct new school buildings or additions to the existing buildings.

It is suggested by the school trustees that such a transfer may be made under the provisions of Section 1205, R. C. M. 1921. The history of that section begins with an act of the territorial legislature of 1871. The provisions regarding transfers of surplus for building and repairs first appear in Section 1908, Fifth Division, Compiled Statutes of 1887, and have been carried with amendments into Section 1205, supra. Those provisions were enacted by the territorial legislature to have application to the common schools of those days. Public high schools were not yet maintained by the state.

This office on May 11, 1934, issued an official opinion in which it was held that section 1205, supra, cannot be reconciled with the provisions of the School District Budget Act (Chapter 146, Laws of 1931), and that surplus funds in the general fund of the district may not be transferred under the provisions of said Section 1205, but that such funds must lapse into the unappropriated funds of the district (Volume 15, Official Opinions of the Attorney General, p. 369).

The reasoning of that opinion applies with special force to the High School Budget Act (Chapter 178, Laws of 1933). The preliminary budget for a school district maintaining a high school is prepared and filed with the County Superintendent of Schools. The County Treasurer must prepare a statement to be attached to the preliminary budget, which statement must show "cash on hand, June 30, 19....., and obligations to be met. 1. Cash on hand in district or county high school fund (including reserve) * * * ." (Section 10.) In determining the "amount necessary to be raised by tax levies for high school purposes" the budget board must deduct "cash on hand in high school fund of district or county high school as per treasurer's statement." (Section 18.) It therefore appears to be the clear intent of the High School Budget Act that surplus moneys in the general fund of the district high school shall

be used for the purposes of the budget of the next ensuing year.

The High School Budget Act makes special provision for transfers, but only for transfers between appropriation items in the budget (Section 14). The act provides that "all appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the school year; * * * ." (Section 17.) The act further provides for appropriations for "repairs and upkeep of buildings and grounds" (Part I, Subdivision III, of the Budget Form, Section 2) and for "new grounds, buildings and alterations" (Part I, Subdivision VII, of the Budget Form, Section 2). The only conclusion to be drawn from the provisions of Sections 14, 17 and 2 is that the trustees must, if they wish to use moneys raised by the special high school tax levy for that purpose, make provision in the budget for funds with which to build or to make improvements upon school buildings used for high school purposes.

It is therefore my opinion that the provisions of Chapter 178, Laws of 1933, cannot be reconciled with the provisions of Section 1205, R. C. M. 1921; and that funds remaining in the High School General Fund of a school district maintaining a high school may not, by a vote of the electors of the district, be used for building purposes.