

Opinion No. 205.**Schools and School Districts—
Maintenance.**

HELD: Liability for maintenance of buildings erected by school districts organized under the provisions of Sections 1301.1, 1301.3, 1301.5, and amendments thereof, is on the county in which such districts are located.

December 6, 1937.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

Dear Mr. Landoe:

You have submitted the following three questions for our opinion:

"1. Will the cost of maintenance and operation, including insurance, on the building erected by the Gallatin County High School District have to be paid by the Gallatin County High School District, which comprises thirty-three school districts, or Gallatin County?"

"2. Will the cost of maintenance and operation including insurance of the high school building, which was maintained as the Gallatin County High School and is now used in conjunction with the structure erected by the Gallatin County High School, be paid by the district or by the Gallatin County?"

"3. Is the Gallatin County High School District established as a permanent district under the afore mentioned laws which will enable it to have an existence as such after the indebtedness created by said district for the completion of its Public Works program has been liquidated or will the property revert to Gallatin County High School and will the district be dissolved?"

Inasmuch as the three questions are inseparably related, I shall consider the same together and without making a separate answer on each.

Sections 1301.1, 1301.3, 1301.5 provide as follows:

Section 1301.1. "High school trustees may undertake public works program—petition not necessary. In counties having a county high school the board of trustees of the county high school and the boards of trustees of any school districts maintaining high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act.

"To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement, repair of

buildings and equipment for the same for the use of any or all high schools in such high school district. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor."

Section 1301.3. "Bonds may be issued by trustees. The boards of trustees of high school districts established under this act are hereby vested with the power and authority to issue and negotiate coupon bonds on the credit of high school districts in conformity with and for any one or more of the purposes provided in existing statutes, or statutes that may be hereafter enacted."

Section 1301.5. "Construction of Act. This act shall not repeal any statute now in force, nor prevent the exercise of powers as elsewhere in the statutes of this state provided. It shall constitute an additional and cumulative method of borrowing money and of carrying out the powers herein authorized. The high school districts created under the provisions of this act, are for construction, repair, improvement and equipment purposes only, and it shall not be construed so as to interfere with or repeal any existing laws relating to the maintenance or operation of high schools within the county."

The last paragraph of Section 1, Chapter 16, of the 1937 Session Laws, provides:

"To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement, repair of buildings, and equipment for the same for the use of any or all high schools in such high school district. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor."

The high school district created under the authority of Chapter 119 of the 1935 Codes, and amendments thereto, was organized for the purpose of undertaking a program of public works in the construction, improvement, re-

pair of buildings, and equipment for the same for the use of any or all high schools in such high school district, and to liquidate the indebtedness occasioned thereby. The obligation of the district so created is circumscribed to said expressed powers extended to it.

The Gallatin County High School exists as it formerly existed, and its corporate powers were not disturbed or affected; it continues to retain its former powers, and the creation of the new district constitutes an additional and over-lapping corporate power. The corporate power of the Galatin County High School will continue to function as it formerly did, likewise will that of the Gallatin County High School District, but each in its own limited sphere.

The powers of maintenance and operation of the buildings have not been vested in the Gallatin County High School District, and such power cannot be implied. The furnishing of insurance is a part of maintenance and operation, and the new district has no such power extended to it to incur such an obligation. Such obligation is upon Gallatin County.

The new school district is expressly authorized to construct, repair, and equip buildings for the use of high schools within said district. Such projects are established for the use of the high schools, and in this case for the use of the Gallatin County High School. No power is vested in the new school district to own said project. The ownership is vested in the Gallatin County High School as distinguished from the Gallatin County High School District. The statute under which the district was created has not limited the life of the school district for any definite term. Theoretically, at least, it is in continued existence, and during its life it is limited in its franchise to those matters hereinbefore expressly enumerated. In the event it cares to undertake additional projects, after the completion of the present project and its liquidation, it may do so without being again reorganized and re-established, but after it has liquidated all of its obligations, in practical effect its duties are suspended. Therefore, it is my opinion that:

Gallatin County will have to pay the cost of maintenance and operation, including insurance on the building

erected by the Galaltin County High School District.

Gallatin County will have to pay the cost of maintenance and operation, including the insurance of the high school building which was maintained as the Gallatin County High School and is now used in conjunction with the structure erected by the Galaltin County High School.

Gallatin County High School District will retain its corporate powers indefinitely, but such powers will be limited to the express purposes defined by statute, and when all projects to be established have been established and liquidated, said district will have no further duties to perform, and while theoretically it will continue in existence, yet for all practical purposes its corporate powers will cease.