

sum of Eight Hundred Thousand Dollars (\$800,000), or so much thereof as is necessary and issue, negotiate and sell Bonds of this School District in the amount of Eight Hundred Thousand Dollars (\$800,000) bearing interest at a rate not to exceed four per cent (4%) per annum, payable semi-annually during a period of twenty years, redeemable at any time after five years, for the purpose of erecting and equipping a new High School in the District."

Opinion No. 21.

Schools— Trustees— School District Bonds. Purpose for Which Issued.

HELD: School trustees may use proceeds of bond issue authorized by electors for building and equipping school house, to equip the same after built, but may not, under such authority, use any of such proceeds to purchase land upon which to build, or build, a stadium.

January 18, 1937.

Miss Margaret A. Leary
District Clerk, School District No. 1
Butte, Montana

Dear Miss Leary:

You have requested an opinion whether or not the bond issue of February, 1934, in your district, permits and authorizes the school board to issue bonds for the purpose of equipping the new high school building, and also of constructing a stadium at an estimated cost of \$10,000, and purchasing land at an estimated cost of \$90,000, without submitting either of these two questions to a vote of the electors.

The substantial facts, which you have given this office, are as follows: The petition was filed by the requisite number of electors December 6, 1933; notice of election was duly given. The bond issue submitted to the electors February 3, 1934, was as follows:

"Shall the Board of Trustees of School District Number One, Silver Bow County, Montana, be authorized to borrow from the Government of the United States, or its agents, the

The bond issue authorized the board to issue not in excess of \$800,000 in bonds, with an interest rate not to exceed 4%. The district actually expended \$440,000. It received \$360,000 as a grant from the government.

Question No. 1. Equipment of the building. The equipping of the building is necessarily implied as consisting of the construction of the building. The bond issue authorized the equipping and the construction of the building, and the equipping of the building as well as the construction includes one issue and is within the authorization of the board. It has been held in the case of *State ex rel. Jay v. Marshall et al.*, 13 Mont. 136, that the word "schoolhouse" includes the equipment. The court said: "The term 'schoolhouse' does not mean simply the house, but refers rather to the school plant, including the general equipment, furniture, maps, charts, globes, etc." See also *McNair v. School District No. 1*, 87 Mont. 423.

It is the opinion of this office that your board has the authority under this bond authorization to purchase the necessary equipment to properly equip this building. The district actually expended \$440,000 and it imposed upon the taxpayers an obligation to that extent. The \$360,000 it received from the government was received as a gift or grant and imposed no obligation whatsoever upon the district, and therefore, in your expenditure for equipment, you need not take into consideration the sum received from the government inasmuch as that grant imposed no obligation. It has been urged that the petition authorizing the election is not clear and is somewhat ambiguous, but the entire proceedings used together definitely state that the district should obligate themselves to not exceed a fixed amount, and the

grant made by the government was not an obligation included therein. Furthermore, if the petition should be determined to be ambiguous, it is immaterial because Chapter 24 of the Twenty-third Legislative Assembly, under which act the bond issue proceedings were had, provides that the election may be called without any petition having been presented or filed, and it has been held in the case of *State ex rel. Fisher v. School District No. 1*, 97 Mont. 358, that in an emergency act the requirements of a general statute can be suspended.

Question No. 2. The information originally submitted to us, supplemented by your letter of January 16, is rather meager in stating the facts, but the facts as you have submitted them, and as appear necessary, are considered in determining this question. The construction of a stadium and the purchase of lands therefor, is a separate and distinct project from that of the construction and equipping of the high school building. Inasmuch as your board is compelled to purchase the necessary lands for the construction of this stadium, it would appear to us that the construction of the stadium was not embraced within the plans of the construction of the building. The sum to be expended for this proposed stadium and land is a very substantial amount. The stadium is separated from the present school building; it is not annexed to and is not a part of the school plant. The present school building already has within it a gymnasium. The construction of this stadium and the purchase of the lands were not included as a part of the issue submitted to the people, and the stadium construction and purchase of the lands and the construction of the building and the purchase of equipment do not constitute a single purpose nor an entity. See Article XIII, Section 5, Constitution of Montana; Section 4630.2 R.C.M., 1935. The case of *McNair v. School District No. 1*, 87 Mont. 423, has no application to this question for the reason that the school board submitted two issues to the people, the first issue for the furnishing and equipping of a high school; the second issue for the purpose of constructing a gymnasium and athletic field in said district. The school board of your district did not submit the

issue of building a stadium and purchasing lands to a vote of the people and only submitted one issue.

It is therefore my opinion that your school board is authorized, subject to your ability to so dispose of said bonds, to furnish and equip the present high school building without submitting the matter in a new bond issue or vote to the electors, but that your board is without authority to construct a stadium and purchase the land for the same under the February, 1934 bond issue authorization, and that to do so you must submit the same under a new bond issue to a vote of the people.