

No. 91

**SCHOOL TRUSTEES—THIRD CLASS DISTRICTS—RE-
MOVAL OF SCHOOLHOUSES—ELECTION—SITE MAY
NOT AGAIN BE CHANGED OR REMOVED FOR THREE
YEARS**

Held: Third class school district trustees, after submitting the question of removing school and school building to electors of district, when a majority of electors voting at such election favor removal, must carry out mandate of people and do not have any discretion in the matter. The statute is mandatory. Such site cannot again be changed within three years, except on advice of County Superintendent of schools and County Health Officer.

April 24, 1941.

Mr. Albert G. Harvey
County Attorney
Liberty County
Chester, Montana

Dear Mr. Harvey:

You have submitted the following:

"A year ago School District No. 38, being a district of the third class, voted on the question of whether to move the school building to another location in the district. The majority vote was in favor

of moving the building, but for some reason or other the building was never moved. Last month the school district held another election over the question of moving the school building. This time the majority voted against moving it from its present site. The trustees of the school district are now proposing to hold another election over the question of whether or not to move the school building. The question has been presented to me as to whether they may lawfully hold another election over this same question."

You state that a year ago (1940) an election was held in the third class School District No. 38, Liberty county, Montana, on the question of moving the school building in said district. I am assuming said election was conducted in accordance with the statutory provisions applicable thereto. The result of the 1940 election was that a majority of the electors of said district voted in favor of moving said school and building to the new location.

Under the foregoing facts, it will be noted the provisions of Section 1173 of the Revised Codes of Montana, 1935, were complied with; and upon the results of said election being made known, the Board of Trustees had no other alternative but to proceed in accordance with the mandate of the people to move the school and school house.

The same principle was involved in the case of the State ex rel. Wildin v. Eickoff et al., 84 Mont. 539, 276 Pac. 954, in which our Supreme Court stated:

"Furthermore, it is apparent from other allegations made that the district is of the third class. The application is clearly made upon that theory, for, it is averred that the school trustees failed to obey the mandate of Section 1173 of the Revised Codes of 1921, which relates exclusively to school districts of the third class.

"Upon filing the petition with the Board of School Trustees it became its plain duty to call an election. It was vested with no discretion in the premises, and, in consequence of its arbitrary refusal to perform such duty imposed upon it by the statute, the peremptory writ of mandate was properly issued." (Emphasis mine.)

Under Section 1173, Revised Codes of Montana, 1935, boards of trustees of third class districts may, whenever they deem it advisable to select, purchase, exchange, or sell a schoolhouse site, or whenever petitioned so to do by one-third of the voters of the district, call a meeting for an election to vote upon such question. Such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers. Three notices giving the time, place, and purpose of such meeting shall be posted by the clerk in three public places in the district at least ten days prior to such meeting. If a majority of the electors of the district voting at such meeting or election shall be in favor of selecting, purchasing, exchanging or selling the schoolhouse site, the board shall carry out the will of the voters thus expressed; provided, that all sites so chosen must be approved by the county superintendent of schools and the county health officer; and also provided that any sites so changed cannot again be changed within three years from the date of such action, except upon advice of the county superintendent of schools and county health officer.

Chapter 165, Laws of 1937, subdivision 8, provides as follows:

"To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other bulidings necessary in the operation of schools of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses 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, and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three notices in three public places in the district at least ten days prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the Board of Trustees from purchasing one or more options for a school site."

The foregoing is a general statute applying to all districts, while Section 1173, Revised Codes of Montana, 1935, is applicable to third class districts only.

It will be seen that, after the Board of Trustees submit the question to a vote of the electors of the district and a majority of the electors voting at the election favor the removal of the school house, it is then mandatory on the Board of Trustees to carry out the will of the people. Any site so changed cannot again be changed within three years from the date of said action, **except** upon advice of the county superintendent of schools and the county health officer.

It is therefore my opinion the election held in 1940 still controls and the Board of Trustees were mandated by said election to make the change and no other change in the site may be made within three years thereof except upon the advice of the county superintendent and county health officer.

Sincerely yours,

JOHN W. BONNER
Attorney General