

Opinion No. 245.

Schools—Board of Trustees of Grade and High Schools—Superintendent of Public Instruction—Rent of School Buildings—Buildings, School.

- Held: 1. The board of trustees of a third-class school district, maintaining both grade and high school, has power to rent or lease from a private corporation a building to be used for both grade and high school purposes.
2. Trustees of a grade school may bind themselves and their successors for the payment of rent of a school building for not longer than a period of one year. Trustees of a high school may bind themselves and their successors for the payment of rent of a school building for as long as three years if a majority of the electors of the district approved the same, and for not longer than one year without the approval of a majority of the electors of the district.
3. It is not mandatory that the superintendent of public instruction approve rental arrangements.
4. Where a building to be rented to the trustees of a grade and high school is to be built by a private corporation at its own expense, on its own land, for the purposes of being rented to the district, it is not mandatory that the plans and specifications be submitted to the authorities designated under the provisions of Section 1262.73, Revised Codes of Montana, 1935. However, such plans and specifications should as a matter of courtesy and judgment be submitted to said authorities. This is advisable in the light that schools should not be maintained in a building that is not properly heated and ventilated with proper lighting facilities.

August 31, 1944.

Mr. J. J. McIntosh
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. McIntosh:

You have submitted the following for my opinion:

"The board of trustees of the Colstrip school district feel that grade and high school facilities in the town of Colstrip are inadequate. Northwestern Improvement Company proposes to build, at its own expense, a building to be used for grade and high school purposes. This building will be erected on land owned by the Improvement Company. The building will then be rented to the Colstrip school district.

"1. Has the board of trustees of a third-class school district, maintaining both grade and high school, power to rent from a private corporation a building to be used for both grade and high school purposes?

"2. If the board of trustees have such power, what is the maximum term for which the trustees may bind themselves and their successors to pay rent?

"3. Must the State Superintendent of Public Instruction approve the rental arrangement?

"4. Inasmuch as the building to be rented is to be built by a private corporation at its own expense, on its own land, for the purpose of being rented to the district, must the plans for the building be approved by the State Superintendent of Public Instruction?

Under the provisions of Section 1015.8, Revised Codes of Montana, 1935, every school board, unless otherwise specifically provided by law, shall have power and it shall be its duty to build, purchase or otherwise **acquire** school houses, school dormitories and other buildings necessary in the operation of schools of their respective districts.

This provision of the statute does not specifically authorize the board of trustees to rent buildings for school purposes. Therefore, it becomes necessary in the determination of "question one" to construe the provisions of Section 1015.8, *supra*, insofar as it pertains to the clause or phrase, "**or otherwise acquire.**" Our Supreme Court has not passed upon this particular question. However, in *State ex rel. Cole v. District Court*, 79 Mont. 1, 7, 254 Pac. 863, the court, in determining rights of partnership in a mining claim

controversy, held that the words, "own and acquire," referred to in Section 8050, Revised Codes of Montana, 1935, have different meanings. The court in that case said:

"The fact that the mining claim, in this instance, was merely leased does not prevent a mining partnership as a result of law. The partners do not have to own the claim. They have to own only a possessory right. That may be 'acquired' by lease. Our statute says 'own or acquire.' (Section 8050, *supra*.) That shows that 'own' and 'acquire' in the statute, have different meanings. Lessees, as well as owners, may be mining partners."

While this case is not necessarily in point, it nevertheless shows that the word 'own' has a different meaning from the word 'acquire.' Using the construction adopted by our Supreme Court in *Cole v. District Court*, *supra*, as a criterion or standard upon which to determine the specific question raised here, i. e., "Has the board of trustees of a third-class school district, maintaining both grade and high schools, power to rent from a private corporation a building to be used for grade and high school purposes?" it would seem that we may, with certain restrictions hereinafter noted, determine that ownership in the proposed building is not necessarily required, and that the board of school trustees may rent a building for school purposes, and enter into a lease therefor. This reasoning is further supported by the definition of the word "acquire" as given in Webster's New International Dictionary which defines the word, "acquire" in the following language:

"To gain by **any** means, usually by one's own exertions; to get as one's own . . ."

Discussing the question further, we find that Section 1019.3, Revised Codes of Montana, 1935, prescribes the form of budget to be used by school district trustees in preparing grade school budgets. One item included in this form is "Amounts Budgeted for Rent." In view of this provision, it seems to me school district trustees must be recognized as having some power to rent a building to be used for grade school purposes.

Section 1262.83 (2), Revised Codes of Montana, 1935, provides that the

board of trustees of a school district maintaining a high school has power, at its discretion, as restricted by law, to lease or contract with any person for suitable building or quarters to be used for any high school purpose, or as a high school dormitory or gymnasium.

Section 1263.2, Revised Codes of Montana, 1935, prescribed the form of budget to be used by the trustees in preparing the high school budget. One of the items included in the budget is rent. In view of these provisions, it is our opinion the trustees have some power to rent a building to be used for high school purposes.

In the light of what has here been said, taking into consideration the various statutes hereinabove referred to, the decision of our Supreme Court in *Cole v. District Court*, supra, and the definition of the word "acquire" used in Webster's Dictionary, I am of the opinion that the board of trustees of a third-class school district, maintaining both grade and high school, has the power to rent from a private corporation a building to be used for both grade and high school purposes.

The next question (2) to be here decided is the maximum term for which the trustees may bind themselves and their successors to pay rent.

Section 1019.4, Revised Codes of Montana, 1935, provides that school trustees are limited in making of expenditures or incurring liabilities to the amount of the detailed appropriations in the annual budget. We believe it follows from this, that school trustees could not bind themselves to pay rent for a building to be used for **grade school** purposes for a term longer than one year and we so hold.

We have a different situation in determining this question as it pertains to high schools and are confronted with the provisions of Section 1262.83 (2), which provides that trustees may lease or contract with any person for buildings to be used for high school purposes, for a term not exceeding three years. This section provides, however, that the board shall not exercise such power by assuming an obligation in excess of funds on hand or available for the current year without the approval of a majority of the voters. We believe it follows from this that the trustees could rent a building for as long as three years if a majority of the electors

of the district approved, and for not longer than one year without the approval of a majority of the electors of the district. And we so hold.

Your third question as to whether the State Superintendent of Public Instruction must approve the rental arrangement, Section 1263.31 and 1019.25, Revised Codes of Montana, 1935, give the State Superintendent of Public Instruction general supervision over enforcement of both grade and high school budget laws. This appears to be the only power given that officer with respect to school budgets. It does not seem to use this power can be construed as giving said officer a power to veto an item for rent which has been included in a grade or high school budget approved by the budget boards charged with the duty of finally approving the school budgets. Therefore, this office holds that it is not mandatory to secure the approval of the Superintendent of Public Instruction for the rental arrangement in question.

In answer to "question four," Section 1262.73, Revised Codes of Montana, 1935, apparently requires approval of plans of high school buildings by the Superintendent of Public Instruction only when such buildings are built by the school district to be used for high school purposes. This section seemingly does not apply where the building is to be constructed by a private corporation at its own expense, on its own land, even though the building is built to be rented to a school district for high school purposes. However, it is fair to say that the plans and specifications should as a matter of courtesy, and good judgment be submitted to the authorities designated under the provision of said Section 1262.73. This is advisable particularly in the light that schools should not be maintained in a building that is not properly heated and ventilated, with proper lighting facilities.

Sincerely yours,
R. V. BOTTOMLY
Attorney General