

Held: 1. The trustees of a second class school district have the power to purchase two lots adjoining a grade school for playground purposes without submitting the question to a vote of the electorate.

2. School trustees may enter into a contract for the purchase of additional land adjoining a school site and the purchase price paid by an appropriation provided in the next ensuing budget or the purchase price may be paid in instalments by provision contained in three successive budgets.

3. A school board of the first or second class may not build a school house, or purchase or locate a school site unless directed so to do by a majority of the electors of the district voting at an election as provided in Section 1015.8, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1937.

January 29, 1946.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You advise me that a second class school district in your county contemplates the purchase of two lots which adjoin the present school property for playground purposes.

You ask specifically the following questions:

Can the trustees of School District No. 15 purchase these two lots as additional playgrounds or as a possible additional grade school site without an election authorizing them to do so?

If the school board can purchase the lots with or without authorization from the electorate, can they set up in their budget for the years 1946-47 a sufficient sum to purchase them or should they have a bond election for the purchase of them? If they purchase them under their budget would it not be permissible to make the purchase price payable over a three-year period?

Opinion No. 118.

**Schools and School District—Purchase,
School Property—Trustees, School
Districts—Bond Election, School
Districts—Election, Bond.**

If the lots are not purchased and it is decided to build a grade school in the north part of town away from their present grade school, would it be necessary to submit to the electorate the site that the new grade school would be built upon?

Your first question is answered by Section 1015, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1937, which provides in part as follows:

"Every school board unless otherwise specifically provided by law shall have power and it shall be its duty: . . .

"8. 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 school houses, school dormitories and other buildings 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." (Emphasis mine.)

The above quoted permits the trustees "to purchase . . . parcels of land . . . for other purposes in connection with the schools of the district." From the facts given, it appears that the trustees contemplate the enlargement of the school grounds by purchase of adjoining lots, and not the selection of a school site. In 58 C. J. 740, the word "site" is defined as follows:

"A plot of ground suitable or set apart for some specific use; a seat or ground plot. The term does not of itself necessarily mean a place or tract of land fixed by definite boundaries."

Our codes use the word "site" as above defined; that is, in the sense that it means a general location for a specific purpose, but not in the sense that the boundaries are fixed. An enlargement of the school grounds would not constitute a change in the site, and thus necessitate submission of the question to the voters at an election.

Your first question also states that the two additional lots together with the lots the school district now owns may be used for the construction of a new grade school building. Subsection 8 of Section 1015, supra, provides that the construction of a new building shall be submitted to the voters, and also the selection of a school site shall likewise be submitted. Authorization for the trustees to build a school building and the selection of the site for the same must be given by the electors at an election held for that purpose.

Section 1019.3, Revised Codes of Montana, 1935, which is a part of the budget act for school districts, provides for "new building and alterations." While this item does not specifically mention the purchase of additional land, yet it is broad enough to cover such a purchase. If the district may allocate funds under this item for the fiscal year 1946-1947 sufficient to make the purchase without exceeding the funds available for the year, and without depriving some other item of the budget of necessary funds, it would be within its power. Also the district could enter into a contract of purchase and agree to pay the purchase price over a period of three years. The trustees, having the power to make such a purchase, may enter into a contract for the best interest of the district. An analogous situation is the case of *Bennett v. Petroleum County*, 87 Mont. 436, 288 Pac. 1018, in which case our court held that the commissioners having the power to lease county buildings may enter into a lease for a term of four years although such a lease would extend beyond the term of the commissioners entering

into the lease. The court did not direct its attention to the fact the lease would create an obligation to be met in future budgets, but such would be the effect, as would the plan of purchase under consideration here. The limitation of indebtedness, Section 6 of Article XIII must be observed in the incurring of this indebtedness.

Your third question is answered by subsection 8 of Section 1015, Revised Codes of Montana, 1935, as amended, which is the applicable statute for the acquisition of a new school site by a second class district. *Nichols v. School District*, 87 Mont. 181, 287 Pac. 624, held that Section 1014, Revised Codes of Montana, 1921, had been amended by Chapter 122, Laws of 1923. Section 1014, appears in the 1935 Codes as giving the power to trustees in first and second class districts to change or select school sites, but the *Nichols* case would control. It would, therefore, be necessary to submit the question of the sale of the school site and also the question of the location and purchase of a new school site to a vote of the qualified electors.

It is therefore my opinion that:

1. The trustees of a second class school district have the power to purchase two lots adjoining a grade school for playground purposes without submitting the question to a vote of the electorate.

2. School trustees may enter into a contract for the purchase of additional land adjoining a school site and the purchase price paid by an appropriation provided in the next ensuing budget or the purchase price may be paid by instalments by provision contained in three successive budgets.

3. A school board of the first or second class may not build a school house or purchase or locate a school site unless directed so to do by a majority of the electors of the district voting at an election as provided in Section 1015.8, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1937.