

June 6, 1946.

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

Dear Mr. Werner:

You have requested my opinion whether a school district may enter into an oil and gas lease. You advise me the land in question is an abandoned school site one acre in area and the school board does not anticipate the land will be needed in the future for school purposes.

Subsection 9 of Section 1015, Revised Codes of Montana, 1935, as amended, makes it the duty of the board of trustees to hold property for the benefit of the school. In other words, the power and duty of the school district is to own real property for school purposes, and the grant of power is not given for the purpose of permitting the district to engage in profit ventures.

Section 1008, Revised Codes of Montana, 1935, as amended by Chapter 206, Laws of 1939, provides in part:

"The trustees of the district shall have the power to lease any property belonging to the district which is not being used for school purposes."

The above quoted portion of Section 1008 is broad in its terms, but must be construed in relation to other pertinent statutes. (*Register Life Insurance Co. v. Keniston*, 99 Mont. 191, 43 Pac. (2d) 251.)

Our Supreme Court in *Young v. Board of Trustees*, 90 Mont. 576, 4 Pac. (2d) 725, held a school district had the power to rent a school building for public dances under a statute which authorized the trustees "to rent, lease and hire such halls, gymnasiums and buildings and portions of buildings as may be suitable for public entertainment." The court considered the question of a school district entering into competition with citizens who operated similar places of entertainment and held by the above statute that the legislature had fixed the public policy in the matter. The court observed the fact that tax exempt property was used in competition and noted the commercial aspect of the power granted the trustees.

Opinion No. 164.

Schools and School Districts—Oil and Gas—Leases, Oil and Gas.

Held: A school district, through its board of trustees, does not have the power or authority to enter into an oil and gas lease concerning school district land which is not necessary for school purposes.

In *Herald v. Board of Education*, 65 W. Va. 765, 65 S. E. 102, the court held a board of education could not lease a school-house lot for the production of oil and gas, since it had only the powers given by statute and such as were absolutely necessary to execute its powers, and could not engage in business or make contracts outside its functions touching education.

Our court, in *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188, stated:

"A school district is a political subdivision of the state, created for the convenient dispatch of public business. It is a public corporation. The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board..."

It would appear from the above quoted limitation on the powers of the trustees that they must be able to point to a specific statute authorizing an oil and gas lease. Such a lease would mean the district was engaging in a commercial enterprise for profit which was far removed from any educational function.

This office, in Opinion No. 19, Volume 21, Report and Official Opinions of the Attorney General, held the trustees of a school district had the power, under Section 1008, Revised Codes of Montana, 1935, as amended, to lease a teacherage not needed for school purposes as a residence. However, it was said "in making the lease the trustees must bear in mind that the property in question is trust property which is for the benefit of the schools." The underlying principle is that the power to grant a lease is ancillary to the trust for school purposes and is limited at all times by the necessity of utilizing the property for the schools.

While it is a fortuitous circumstance that abandoned school land has an enhanced value because of its proximity

to a producing oil well, yet such a fact would not justify the trustees in engaging in a long time lease with a purely commercial aspect. The whole theory and policy of our school laws is to give to the school trustees the powers necessary and requisite to manage and conduct schools for school purposes only.

The trustees may realize a profit by the sale of the lands upon being directed to do so by the electors of the district. Such a sale would have to be of the whole of the property as there is no provision in the statutes granting the power to sell for a reservation of the mineral interests. The procedure for sale was set out in an opinion of this office, Opinion No. 15, Volume 21, Report and Official Opinions of the Attorney General, and I refer you to it.

It should be kept in mind the legislature determines the policy and the law governing school districts, and the authority of boards of school trustees. Boards of county commissioners for many years have been granted the authority to lease county owned lands, but before they could enter into an oil and gas lease for the county on such lands, it was necessary for the legislature to enact special enabling laws granting to boards of county commissioners that particular authority and setting up procedural practice therefor. The legislature may see fit to grant such authority to boards of trustees of school districts, but until such enabling legislation is enacted, it would appear to me that such a procedure is beyond the present authority granted to boards of school trustees by the legislature.

It is therefore my opinion a school district, through its board of trustees, does not have the power or authority to enter into an oil and gas lease concerning school district land which is not necessary for school purposes.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General