

representatives of the budget board and school trustees of School District No. 1, Silver Bow County, the county superintendent, the State Superintendent of Public Instruction, and representatives of interested citizen of Silver Bow County. The procedure herein set forth was suggested at this meeting by this office as proper under the pertinent statutes involved, and agreed to by all parties present.

School District No. 1 of Silver Bow County contemplates the purchase of a new elementary school site, the acquisition of which site was approved by the qualified voters at an election. The necessity for acquiring the site arises from the fact that two schools were destroyed due to the undermining of the schools and shifting of the buildings so that they, together with their lands, must be abandoned. Compensation was paid for the injury to the schools and the money so paid is held as a trust fund. The trustees asked the manner of payment for the new school site.

While negotiations for the purchase of the new school site were entered into prior to June 30th, yet payment could not be made under the school budget in force at the time of such negotiations as there was no appropriation made in the budget for this purpose. (Section 1019.16, Revised Codes of Montana, 1935.)

An emergency was declared by the board of trustees, but there was not sufficient compliance with Chapter 134, Laws of 1945, which amended Section 1019.16, Revised Codes of Montana, 1935, to permit such an appropriation.

The new budget which is now being prepared could provide for the purchase of the new school site, which has been approved by the qualified electors. Item 11 of Section 1 of the school budget which is set out in Section 1019.3, Revised Codes of Montana, 1935, provides for "new buildings and alterations (not financed from sale of bonds)." This has been construed by this office to be broad enough to include the purchase of additional land for school purposes. (Opinion No. 118, Volume 21, Report and Official Opinions of the Attorney General.) Any surplus available from the previous budget would be available in the new budget to pay this item and thus not alter the necessary appropriations in the new budget.

Opinion No. 185.

Schools and School Districts—Budget,
School—Purchase of, School Site—
Election, School.

Held: The board of trustees of an elementary school district may finance the purchase of a school site, which has been approved by the electorate, by either providing in the school budget for such an appropriation item, or by using the funds realized from the compensation paid for the destruction of the school to be replaced.

July 31, 1946

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

You have requested my opinion concerning the following facts which were thoroughly discussed at a conference in this office on July 29, 1946. There were present at this conference repre-

Another alternative—and perhaps the best—for the payment for the new school site is to utilize a portion of the funds realized from the settlement for damages to the schools that were destroyed. The funds in question are analogous to the moneys realized from insurance on a school which has been destroyed by fire. In the case of *State ex rel. Diederichs v. Board of Trustees*, 91 Mont. 300, 7 Pac. (2d) 543, the court said:

“Here the indebtedness incurred for a county high school building by the issuance of bonds was regularly approved by the people and the indebtedness so incurred is drawing interest. In consequence of the fire, the county is now without benefit. The fire converted the building into money available only for the reconstruction of the high school . . .

“The fire has resulted in reconverting the building into money. Instead of the building, the county now holds the ruins of the building and the insurance money collected . . . and in the meantime until the building is reconstructed, the county is put to expense and inconvenience in maintaining its high school.”

The money realized from the settlement is trust funds, earmarked for the construction of a school to replace the schools destroyed. The land on which the old schools were located is valueless for the construction of a new school, and in order to build a new school it will be necessary to procure a new site. The use of the trust funds for the purchase of a new site would carry out the purpose of the trust and be in no way a variance from the obligations of the trust.

The Supreme Court of Georgia in the case of *Conley v. Rogers*, 169 Ga. 85, 149 S. E. 699, considered a similar problem and said:

“ . . . It is strongly urged by able counsel for the defendants that the sum of \$21,000, resulting from the removal and destruction of the school building, can properly be used by the trustees of the Reidsville school district in discharging any proper and just obligation of that district. We cannot concur in that argument, but are constrained to hold that the proceeds accruing from the destruction of the building, whether consisting

of insurance or any salvage that might have been saved from the building, is by law placed in special trust of the trustees of the school district, for the sole purpose of replacing a school building for that district, either upon the site where the building formerly stood or some other site purchased by the board of trustees as the location of a new school building . . .”

Under the present budget law it is contemplated that expenditures for the construction of school buildings shall be financed by the issuance of bonds with the result that the tax burden will be spread out over a period of years and not constitute an unreasonable tax burden for any one year. If the purchase of the school site is made from the trust funds and the balance of the moneys necessary for the construction of the schools raised by a bond issue, the tax burden will be distributed over the period of the terms of the bonds. Also, such use of the trust funds will permit the funds available in the new budget to be used to better advantage as the cost of maintenance and operation of schools has greatly increased. The teachers, officers and employees of schools, due to the increased cost of living, are entitled to additional compensation for their services, with the result that school budgets must meet such justifiable demands.

It is therefore my opinion that the board of trustees of an elementary school district may finance the purchase of a school site, which has been approved by the electorate, by either providing in the school budget for such an appropriation item, or by using the funds realized from the compensation paid for the destruction of the school to be replaced.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General