

Opinion No. 223.

**School Building Construction of—
Elementary School Building Construc-
tion of—Funds, Construction of School.**

Held: Money received as insurance for the destruction by fire of a high school building, may not be expended for the building of an elementary school without

authority therefor having first been procured from the electorate voting at an election called for that purpose. Money received as damages for destruction of elementary school buildings may be used for the purchase of a site and building a new elementary school to take the place of one destroyed, without a vote of the electorate.

November 23, 1946.

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

Dear Mr. Roe:

You have requested my opinion concerning the following:

School District No. 1, Silver Bow County, contemplates the construction of a new elementary school. The district has on hand funds paid as compensation for the destruction of two elementary schools. There is also available insurance money paid to the district because of the destruction by fire of the high school. You ask if it is necessary to have the approval of the electorate of the district before these funds may be spent for the construction of a new elementary school.

This office previously held in Opinion No. 185, Volume 21, Report and Official Opinions of the Attorney General, a portion of the funds realized as compensation for the destruction of the two elementary schools could be used to purchase a new elementary school site which had been approved by the electorate. One of the reasons given was that the money realized from the settlement was a trust fund, earmarked for the construction of a school to replace the schools destroyed.

The principal question involved here is whether or not the board of trustees of School District No. 1, of Silver Bow County has authority to expend cash on hand for the purpose of erecting an elementary school to replace two elementary schools damaged to the extent they had to be abandoned, without first having obtained authority from the electors. The cash on hand consists of the sum of \$300,000.00

received as insurance for the destruction by fire of an abandoned high school, and the further sum of \$100,000.00 received for damage to the elementary schools.

Our Supreme Court in the case of State ex rel. Diederichs v. Board of Trustees, 91 Mont. 300, 7 Pac. (2d) 543, held that insurance money received as a consequence of the destruction by fire of a county high school could be used to construct or rebuild a high school to replace the one destroyed, without first having submitted the question to a vote of the electorate. The court in deciding the question of whether or not the expenditures of the insurance money came within the constitutional prohibition as to creating a debt or liability, said:

“ . . . The fire converted the building into money available only for the reconstruction of the high school, and consequently, since the original purpose has been given approval by the electors, there is now no useful purpose to be subserved by again submitting the question of the proposed expenditure to the people for approval, nor does the Constitution or law require it . . .

“It seems plain that the constitutional limitation does not apply to the expenditure of cash on hand provided for a specific purpose; but rather to the creation of an obligation to be met and paid in the future by the taxpayers.”

Applying the law as laid down in the Diederichs case to the facts here, the money received as insurance from the destruction of the high school may be used only for the purpose of replacing the high school, and for no other purpose, without a vote of the electorate. It could not be used for the purpose of building an elementary school, for the reason that the original funds approved by the electorate were for a different purpose, that is for the building of a high school. The same is true of the money received for damages to the elementary schools. That money may be used for the purpose of building an elementary school to take the place of the ones destroyed, and for no other purpose, without a vote of the electorate.

Under the provisions of paragraph 8 of Section 1015, Revised Codes of Montana, 1935, as amended, before the

trustees may build the new school or procure a new site they must first be authorized to do so by a majority vote of the electors of the district.

I am advised that the trustees have already been authorized to procure a site, and in fact, the same has already been purchased. I do not understand, however, that the trustees were also authorized to build a school building on this site. If not, then this question must be submitted to the electorate. At the same time the question as to the expenditure of the funds received as insurance for destruction of the old high school could be submitted to the electorate.

It is therefore my opinion that money received as insurance for the destruction by fire of a high school building, may not be expended for the building of an elementary school without authority therefor having been first procured from the electorate voting at an election called for that purpose.

It is further my opinion that money received as damages for destruction of elementary school buildings may be use for the purchase of a site and building a new elementary school to take the place of the one destroyed, without a vote of the electorate.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General