

**Opinion No. 27.**

**Schools and School Districts—Superintendent of School—Budgets.**

**Held: A school district may not use surplus funds to purchase a residence for the school superintendent.**

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April 13, 1945.

Mr. Carl Lindquist  
County Attorney  
Daniels County  
Scobey, Montana

Dear Mr. Lindquist:

You have requested my opinion whether a school district may use surplus funds to purchase a residence for the school superintendent.

The only statutory authority for the use of surplus school funds is found in Section 1205, Revised Codes of Montana, 1935, which provides in part:

"Any surplus in the general school fund . . . on a vote of the qualified electors of said district may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage, or barn."

However, this office has held surplus funds remaining in the high school general fund shall be used for the purposes of the next ensuing budget. In an opinion in Volume 16, page 300, Report and Official Opinions of the Attorney General, it was said:

"This office on May 11, 1934, issued an official opinion in which it was held that Section 1205, supra, cannot be reconciled with the provisions of the School Budget Act (Chapter 146, Laws of 1931), and that surplus funds in the general fund of the district may not be transferred under the provisions of said Section 1205, but that such funds must lapse into the unappropriated funds of the district (Volume 15, Official Opinions of the Attorney General, page 369). The reasoning of that opinion applies with special force to the High School Budget Act (Chapter 178, Laws of 1933)." (See also opinions No. 221 and No. 235, Volume 20, Report and Official Opinions of the Attorney General.)

It should also be noted that Section 1205, Revised Codes of Montana, 1935, permits surplus funds to be used for "erecting buildings, a teacherage, or barn." A teacherage is defined in Webster's Dictionary as "a residence provided for teachers." A superintendent of schools is not customarily considered a teacher as his work is not primarily that of instructing. Thus it would seem if the budget laws permitted the expenditure of funds under Section 1205, the terms of Section 1205 are not broad enough to permit the purchase of a

residence for a superintendent of schools.

While it might be to the best interest of the school district under the present circumstances to permit the purchase of a residence, such fact cannot be considered, as our Supreme Court said in the case of *Franzke v. Fergus County*, 76 Mont. 150, 245 Pac. 962:

"The doctrine of expediency does not enter into the construction of statutes."

It is therefore my opinion a school district may not use surplus funds to purchase a residence for the school superintendent.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General