

Bean v. Lyons et al, 37 Mont. 354, 364, 96 Pac. 922.)

School boards have no powers except those expressly granted, or necessarily implied from those granted. (McNair v. School District No. 1 of Cascade County, 87 Mont. 423, 288 Pac. 188.)

From the foregoing, we find it is an elementary principle of law, and one which has been frequently announced by our Supreme Court, that public officers, such as boards of county commissioners and school trustees, may exercise only such powers as are expressly granted them by statute, or such as necessarily follow from those expressly granted. Particularly is this true in matters involving expenditures of public moneys. Unless authority to spend public money for a specific purpose has been given by the law-making body, no public officer has any authority to make such an expenditure, no matter how necessary or advantageous it might be for him to do so.

Here we not only have no express authority granted, but also a law expressly forbidding the contemplated action. Section 1263.15, Revised Codes of Montana, 1935, being a part of the Budget Act, dealing with transfers among budget items, provides in part as follows:

"Provided, however, that no transfer shall ever be authorized by a clerk of a school district, and no transfer shall ever be made by a county treasurer between any appropriation made in a budget for maintaining a high school or high schools and any budget appropriation for maintaining elementary grade schools in the same district."

The foregoing language needs no interpretation; it is plain and means exactly what it says. We must take the law as we find it.

I am therefore constrained to hold, and it is my opinion that the board of trustees may not transfer any of the money or funds from the high school budget in the district to an elementary school budget in the district.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General

Opinion No. 67.

Budgets—School Districts—High
School Budget—Elementary
School Budget.

Held: The board of trustees may not transfer any of the money or funds from the high school budget in the district to an elementary school budget in the district.

September 18, 1945.

Mr. K. W. MacPherson
County Attorney
Powell County
Deer Lodge, Montana

Dear Mr. MacPherson:

You have submitted the following question for my opinion:

This school district maintains both a district high school and a district elementary school, and a budget was regularly adopted for the high school and the elementary school. It now appears that there will be no children in the high school. Under such circumstances, may the district board of trustees transfer all or part of the funds budgeted for the high school to the elementary school?

I agree that these facts present a very serious situation confronting this district. No doubt it would be desirable for this action to be taken if the board of trustees were authorized to do so. However, our Supreme Court has held that the fact that the contemplated action may be in the best interests of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes. (Franzke v. Fergus County, 76 Mont. 150, 158; 245 Pac. 962.)

"The power to act without authority does not exist." (State ex rel