

Opinion No. 93.

Schools and School Districts—Leases,
School Property—Trustees, School,
Duties of—Teacherage, Authority of
School District to Lease or Rent.

Held: The board of trustees of a school district has the authority to lease a teacherage to a family as a residence provided the teacherage is not needed for the use of the school and also the occupancy by the tenant will not interfere with the operation and use of the facilities of the school and school grounds as a school.

November 19, 1945.

Miss Elizabeth Ireland
Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have requested my opinion asking if the board of trustees of a school district has the authority to lease or rent a teacherage to a family for a residence.

Section 1015, Revised Codes of Montana, 1935, as amended, provides in part:

"Every school board unless otherwise specially provided by law shall have power and it shall be its duty . . .

"9. To hold in trust for their district all real or personal property for the benefit of the school thereof."

The above quoted makes it the duty of the board of trustees to utilize the property of the school district primarily for the benefit of the schools.

Section 1008, Revised Codes of Montana, 1935, as amended by Chapter 206, Laws of 1939, defines the power of the board of trustees over the property of the district, and states 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."

This power to lease school property as granted in Section 1008, as amended, is broad in its terms, but must be construed in relation to other pertinent statutes defining the duties and powers of school trustees.

Our Supreme Court in *Register Life Insurance Co. v. Kenniston*, 99 Mont. 191, 43 Pac. (2d) 251, said:

"Statutes which are not inconsistent with one another, and which relate to the same subject matter, are in *pari materia* and should be construed together and effect given to both if it is possible to do so."

In construing the two sections together, the conclusion must be reached that the board of trustees has the power to lease a teacherage for a residence, but 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. If the occupancy of the premises by the tenants would interfere with the operation of the school in any way, then the trust reposed in the trustees would be violated. This is recognized in 47 Am. Jur. 345, where the text states:

"Unquestionably, school directors have no authority to permit schoolhouses to be used for any purpose interfering with their use as schools, and any contract providing for such uses is void."

It is therefore my opinion that the board of trustees of a school district has the authority to lease a teacherage to a family as a residence provided the teacherage is not needed for the use of the school and also the occupancy by the tenant will not interfere with the operation and use of the facilities of the school and school grounds as a school.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General