

Since the sale, a colony of Hutterites have moved into the district and wish to have a public school established. You also state the Hutterites have offered the use of their church for school purposes for the next school year. The questions which you submitted are as follows:

(a) May the school trustees temporarily set up a public school in the church building owned by the Hutterites, which is located upon the private property of the Hutterites?

(b) Must the school trustees furnish free textbooks for the conduct of such a school?

(c) Must the school trustees furnish a teacher for the conduct of such a school?

Opinion No. 55

Schools—School Trustees—Temporary School Buildings—Textbooks—Teachers.

Held: (1) A Board of Trustees of a school district may set up a school in a church building for temporary use and to meet an emergency. The selection of a permanent school site and the construction of a school building must be authorized by the qualified electors of the district at an election called for that purpose, within a reasonable time.

(2) School trustees must purchase and furnish free textbooks for the use of the schools in their districts.

(3) School trustees must hire a teacher or teachers for the schools in their districts even though the teachers will be employed in a new school temporarily located.

August 11, 1947

Mr. Melvin E. Magnuson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Magnuson:

You have advised me that, in school district No. 27, the school site and the school building were previously sold.

The Montana Constitution makes it the duty of the legislature to provide for schools. Our Supreme Court, in *Grant v. Michels*, 94 Mont. 452, 23 Pac. (2d) 266, considered the constitutional provision and said:

"Section 1 of Article XI of the Constitution declares that 'it shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.' This is a 'solemn mandate' to the legislature for the purpose of insuring to the people the system described. (*Evers v. Hudson*, 36 Mont. 135, 92 Pac. 462.) This mandate was obeyed by the legislature in the enactment of laws setting up the machinery for the creation and maintenance of school districts throughout the state. The number, location and extent of the districts within a county must, of course, be, and is by law, left to local option and governed by circumstances; . . ."

It is apparent from the above quoted that the maintenance of schools within the state is of paramount importance. In Section 1015, Revised Codes of Montana, 1935, as amended, it is made the duty of trustees to employ teachers, to provide school furniture and to acquire school houses. The selection of a school site must be done under the direction of a ma-

jority of the electors. However, the problem which you present is not the selection of a permanent school site or school house, but the selection of a temporary school house to meet what amounts to an emergency. In State ex rel. Bean v. Lions, 37 Mont. 354, 96 Pac. 922, our Court held:

"It may well be that in cases of emergencies, and for temporary purposes until electors may be consulted, the trustees might move the school."

A similar conclusion was reached by this office in Volume 7, Report and Official Opinions of the Attorney General, page 157, weherein it was held:

"A Board of Trustees has the authority to employ a teacher, furnish books, and temporarily maintain a new school without a vote of the electors. **This would not include the right to locate a permanent site for the school house.**"

It must be kept in mind that such a school is of a temporary nature, to meet an emergency, and that a permanent site for the school house must be authorized by the qualified electors of the district within a reasonable time. Also, the school will be a public school conducted under the laws of the State of Montana.

The question of furnishing free textbooks is answered by Section 1198, Revised Codes of Montana, 1935, which makes it the duty of all school boards to purchase textbooks for the use of the pupils in attendance at their schools.

I am assuming that the board of trustees has taken the proper budgetary procedure.

It is, therefore, my opinion:

(1) A board of Trustees of a school district may set up a school in a church building for temporary use and to meet an emergency. The selection of a permanent school site and the construction of a school building must be authorized by the qualified electors of the district at an election called for that purpose, within a reasonable time.

(2) School trustees must purchase and furnish free textbooks for the use of the schools in their districts.

(3) School trustees must hire a teacher or teachers for the schools in their districts even though the teachers will be employed in a new school temporarily located.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General