

Opinion No. 80

**County High School — Trustees,
County High School, Authority
to Sell Property — County
Commissioners, Authority
to Purchase Property.**

Held: 1. The board of trustees of a county high school has the authority to sell real property owned by the district and undesirable for school purposes under the provisions of Chapter 106, Laws of 1939, as amended by Chapter 232, Laws of 1947.

2. The board of county commissioners has the power to purchase real property necessary for county purposes under the authority granted in Section 4465.7, Revised Codes of Montana, 1935, and in conformity with the provisions of the "Budget Act."

November 18, 1947

Mr. Dick Armstrong
County Clerk and Recorder
Sweet Grass County
Big Timber, Montana

Dear Mr. Armstrong:

You have requested my opinion concerning the sale of county high school property and the purchase of the property by the county. You advise me that the trustees of the county

high school purchased a site for a dormitory in 1919, and it has never been used and the trustees would like to sell the property. You also state that the county would like to purchase the same for a county hospital site.

In answering your question it is important to note that a board of trustees has limited powers as was observed in *McNair v. School District*, 87 Mont. 423, 288 Pac. 188, in which case the Court said:

"The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board."

There is no express authority which would permit the trustees of a county high school to convey property to the county without holding a sale.

As the property under consideration has been held by the school for a great number of years and never been used, and the trustees do not contemplate that it will be used, it can be considered as undesirable for school purposes. Chapter 106, Laws of 1939, as amended by Chapter 232, Laws of 1947, authorizes trustees to sell lands which are unsuitable or undesirable for school purposes and defines the procedure to be followed. This chapter does not require that an election shall be held and thus results in a saving to the county for the sale of property coming within the provisions of the statute.

The board of County Commissioners is limited in its powers as is the board of trustees of the county high school, which principle was recognized in *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, wherein it was stated:

"The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon

it or which are necessarily implied from those expressed, and that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied."

Section 4465.7, Revised Codes of Montana, 1935, grants the power to the board of county commissioners to purchase real property necessary for the use of the county, but a purchase of real property in excess of \$100.00 must not be made without securing an appraisal of the value, and in accordance with the Budget Act.

In your letter you did not state the approximate value of the property, but if the purchase price is in excess of \$10,000.00, one of the provisions of Section 5 of Article XIII of the Montana Constitution must be observed, which provides:

"No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law."

See Opinion No. 43, Report and Official Opinions of the Attorney General, Volume 22, and Opinion No. 15, Report and Official Opinions of the Attorney General, Volume 21.

It is my opinion that the board of trustees of a county high school has the authority to sell real property owned by the district and undesirable for school purposes under the provisions of Chapter 106, Laws of 1939, as amended by Chapter 232, Laws of 1947.

It is also my opinion that the board of county commissioners has the power to purchase real property necessary for county purposes under the authority granted in Section 4465.7, Revised Codes of Montana, 1935, and in conformity with the provisions of the "Budget Act".

Sincerely yours,
R. V. BOTTOMLY,
Attorney General