

Opinion No. 102

**Adult Education—School Districts—
Board of Trustees—Statutes—Sec-
tion 75-1633, 75-4231, Revised
Codes of Montana, 1947.**

Held: The Board of Trustees of a school district may not engage in any activities which are not exclusively for educational purposes.

Whether or not the school district may operate a cannery as part of their adult education program is a question which must be decided by the members of the board of trustees. The determinate factor being the utility of the appliance for educational uses. However, the cannery may in no manner be used as a commercial or general service device.

July 9, 1952.

Mr. Robert Hurley
County Attorney
Valley County
Glasgow, Montana

Dear Mr. Hurley:

You have submitted the following question to me for an official opinion:

"May the board of trustees of a school district operate a cannery as part of their adult education program?"

It is a basic proposition that school boards have no powers except those expressly granted, or necessarily implied from those granted. See, *McNair vs. School District No. 1 of Cascade County*, 87 Mont. 423, 228 Pac. 188.

Section 75-1633, Revised Codes of Montana, 1946, provides:

"The board of trustees of any school district or of any county high school is authorized to permit the use of school rooms for adult education, schools or classes for adults sixteen (16) years of ages or over, and if the school is desirous of raising money to help effect the purpose of this act, the board of county commissioners may levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the district, in addition to all

other levies for school purposes, for the support and maintenance of such adult education, schools or classes, provided that the board of school trustees of any such district requiring such levy must call an election in the manner prescribed for such extra levies by section 75-1707, for the purpose of obtaining the approval of the district to the making of such additional levy and provided further that such election must be held before the 1st day of July."

It has been held that "education" is the process of developing and training the powers and capabilities of human beings, as preparing and fitting one for a calling or business, or for activity or usefulness in life, and may be particularly directed to either mental, moral or physical powers and faculties, but in its broadest and best sense it relates to all of them. *Lyme High School Ass'n vs. Alling* 113 Conn. 220, 154 A. 438, also, *McNair vs. School District No. 1 of Cascade County*, (supra).

A cannery, that is, canning machinery and the operation thereof is as much a part of adult education as welding machines and manual training equipment. As such it may be maintained and operated by the school. However, a commercial cannery not intended for instructional purposes would not be within the purview of a school district. School funds cannot be used for a community project which is unrelated to education. Section 75-4231, R. C. M., 1947, enumerates the general powers and duties of boards of trustees. It is a basic proposition that school boards have no powers except those expressly granted, or necessarily implied from those granted. *McNair vs. School District No. 1 of Cascade County*, 87 Mont. 423, 228 Pac. 188. Consequently, the school board must act within the purview of this statute. The statute clearly limits the school trustees to educational functions.

What constitutes educational purposes has been raised in cases involving private liability. See *Perkins vs. Trask et al.*, 95 Mont. 1, 23 Pac. 2d. 983. *Bartell vs. School District No. 28, Lake County*, 114 Mont. 451, 137 Pac. 422. The question might well arise again in this instance. Given a community project operated by a school district and utilized generally, who

would be liable for accidents? If used exclusively for education, general immunity would extend to the school district. However, if the cannery is used commercially, the trustees might be individually liable.

Whether the board should enter into such an arrangement is, in the final analysis, a question of administrative discretion, with which the board is vested, and determinative only by the board itself. It becomes a question of fact rather than law. In order to bring the facts within the law the cannery must be operated exclusively to educate adults in the methods of canning. Whether it is necessary to have a cannery in order to teach proper canning methods such as would be adaptable to better home techniques is for the board to decide. If the cannery is to be operated as a commercial project whereby people can bring their goods to be canned as they desire it is not a proper function of the school district, in the absence of legislative permission, no matter how worthwhile the project may be from a civic viewpoint.

It is therefore my opinion that the board of trustees may not engage in any endeavors which are not exclusively for educational purposes. Whether or not the school district may operate a cannery as a part of their adult education program is a question which must be decided by the members of the board, the determinate factor being the utility of the appliance for educational uses.

It is further my opinion that the cannery may in no manner be used as a commercial or general service device. Such functions are beyond the powers of the board of trustees.

Very truly yours,
ARNOLD H. OLSEN
Attorney General