

Opinion No. 123**Schools and School Districts—County Lands—County Commissioners—Gift of County Parks to School Districts Prohibited.**

Held: The Board of County Commissioners does not have the power to give to a school district a public park owned by the county for the use of the school district as a school site.

October 1st, 1952.

Mr. Michael J. O'Connell
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. O'Connell:

You have requested my opinion concerning the authority of the board of county commissioners to make a gift of lands contained in a federal townsite and designated for public park purposes to the board of trustees of the school district to be used by the school district as a school site. The land in question is not in an incorporated city or town and there is no problem of ownership by the federal government.

The power of a county to acquire land for park purposes is found in Section 62-101, Revised Codes of Montana, 1947, which reads in part as follows:

"The several counties of this state are hereby authorized and empowered to acquire by purchase, grant, deed, gift, devise or condemnation, or otherwise, lands suitable for public camping and public recreational purposes, civic centers, youth centers, museums, recreational centers and any combination thereof, or may lease such land tracts, each of which

shall be so situated as to offer ready access to a public highway."

Also, a county has the authority to hold lands within its limits under the provisions of Section 16-804, Revised Codes of Montana, 1947. There is no statutory authority authorizing a county to vacate the use of the land for park purposes. In the case of *Lloyd vs. City of Great Falls*, 107 Mont. 442, 86 Pac. (2d) 395, the court quoted with approval the following:

"Where lands have been dedicated and used for a public park or square, the municipal corporation holds the title in trust for the public and has no power, unless specially authorized by the legislature, to appropriate such lands for the use and benefit of private persons or corporations, sell the same, or in any way divert the land from the uses and purposes of its original dedication. * * *."

In the absence of specific statutory authority to vacate the land for park purposes the board of county commissioners does not have the power to divert the use of the land to the school district. The board of county commissioners has only such powers as are conferred by law, either expressly or by implication. *Lewis vs. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60.

I realize that the public interest might be served by authorizing the county to give the land to the school district. However, such cannot be considered, as the rule stated in *Franzke vs. Fergus County*, 76 Mont. 150, 245 Pac. 962, applies to the problem presented. The court in that case said:

"The fact that the contemplated action may be in the best interest of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes."

It is therefore my opinion that the board of county commissioners does not have the power to give to a school district a public park owned by the county for the use of the school district as a school site.

Very truly yours,
ARNOLD H. OLSEN
Attorney General