

**of the school building by fire, to replace the building without first securing the approval of the qualified electors for such expenditure.**

July 5th, 1951

Mr. Charles B. Sande  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr Sande:

You requested my opinion concerning the replacement of an elementary school building which was destroyed by fire. You advise me that the building was covered by insurance, and the trustees of the district would like to replace the building, but you ask if an election will be necessary by the electors of the district approving the purchase or building of a school house as a condition precedent.

An analogous situation was considered in the case of *State ex rel. Diederichs v. Board of Trustees*, 91 Mont. 300, 7 Pac. (2d) 5-43, where the court held that insurance money realized from the destruction of a county high school by fire constituted a trust fund which could be expended by the Board of Trustees to construct or rebuild the school to replace the one destroyed without first having submitted the question to a vote of the electorate. This office in Opinion No. 223, Volume 21, Report and Official Opinions of the Attorney General considered facts similar to those submitted by you and held "that money received as damages for destruction of elementary school buildings may be used for the purchase of a site in building a new elementary school to take the place of the one destroyed without the vote of the electorate." In the *Diederichs* case, the court emphasized that the object of insuring a school building was to provide for its repair or replacement in the event of fire. The court was explicit in stating that the funds realized from the insurance was a trust fund and should be used to replace the school building. It should be remembered that the replacement of the building destroyed does not constitute the selection of a new site nor does it result in incurring a liability if only the trust fund is used to replace the school destroyed.

**Opinion No. 28**

**Schools and School Districts  
—Insurance Money From Destruction  
of School—Construction of  
Elementary School**

**Held: The trustees of a school district may use insurance money, realized from the destruction of**

It is, therefore, my opinion that the trustees of a school district may use insurance money, realized from the destruction of the school building by fire, to replace the building without first securing the approval of the qualified electors for such expenditure.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General