

**Opinion No. 4****Schools And School Districts  
—Architect's Fee—Building Fund—  
Proceeds of Bond Issue**

**Held: An architect's fee for drawing plans and specifications for, and supervising the construction of a school building may be paid from the proceeds of the funds realized from the sale of bonds for the construction of such a building.**

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February 24th, 1951.

Mr. George D. Ore  
County Attorney  
Petroleum County  
Winnett, Montana

Dear Mr. Ore:

You have requested my opinion as to whether an architect's fee may be

paid from the funds realized from the sale of bonds for the construction of a school.

There is not a specific statute concerning the payment of an architect's fee and directing the manner of its payment.

Section 75-3922, Revised Codes of Montana, 1947, provides in part as follows:

"All moneys arising from the sale of such bonds shall be paid to the county treasurer and by him credited to the school district issuing the same, and shall be immediately available to the purpose for which the bonds were issued and no other purpose."

In view of this statute it is necessary to determine whether the expenditures of funds realized from the sale of bonds in payment of an architect's fee is included within the purpose of the bond issue. A helpful definition of an architect is found in 3 Am. Jur. 998, which reads as follows:

"An architect is one whose occupation it is to form or devise plans and designs and draw up specifications for buildings or structures, and to superintend their construction."

It is apparent from this definition that the work of an architect is supervisory in nature, but enters into the construction of the building because of the fact that he plans the building from its initial stage to completion.

Our Supreme Court in *Caird Engineering Works vs. Seven-up Mining Company*, 111 Mont. 471, 111 Pac. (2d) 1267, held that an architect is entitled to a mechanic's lien for furnishing plans and specifications for, and supervising the construction of a building. In granting such a lien the court recognized that the services of an architect were work and labor which entered into the construction of the building. If an architect may claim a lien for his fee then such a claim could also be paid from a building fund as it would be on the same basis as any laborer who performed services in the construction of the building. This office in opinion No. 105, Volume 16, Reports and Official Opinions of the Attorney General held that an architect's fee could be paid from the general fund of a school district, and, by

implication, also held that such payment could also be made from the building account.

It is, therefore, my opinion that an architect's fee for drawing the plans and specifications for, and supervising the construction of a school building may be paid from the proceeds of the funds realized from the sale of bonds for the construction of such a building.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General