

building not needed for the purposes of the county high school, which building would be used by the district for school purposes.

August 27, 1954.

Mr. Harold L. Allen
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Allen:

You have requested my opinion concerning the power of the board of trustees of a county high school to lease a high school building to a school district to be used for junior high school purposes. You advise me that a new high school will be constructed and the present county high school building will not be needed for high school purposes after the construction of the new building.

As a county high school is constructed with county funds and by the issuance of county bonds, the legal title to the county high school is in the county. (*Pierson v. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991.) Section 75-1636, R. C. M., 1947, gives specific authority to the county commissioners to lease any county real or personal property to school districts. This section reads as follows:

"Leasing of County Lands for School Purposes—Limitation of Term. Whenever any county of the State of Montana shall have acquired title to any real or personal property in any manner now provided by law and such property is suitable or useful for dormitory or gymnasium or school purposes to any public school located within the same city, town or school district where said property is situated, the board of county commissioners of said county may, upon request of the board of trustees of any such school district, lease said property to such school district for school dormitory or gymnasium purposes for such rental as the said board of county commissioners may deem adequate and for such term of years, not exceeding four years, as the board may see fit."

Opinion No. 93.

**School and School Districts—Lease of
County Buildings to School Dis-
tricts—County High Schools—
Trustees—County Com-
missioners.**

HELD: The board of county commissioners and the board of trustees of a county high school may lease to a school district for a term not exceeding four years a county high school

It is to be noted in the above-quoted statute that the commissioners have not only discretionary power as to whether a lease should be given to a school district, but, also as to the rental. However, the term of the lease cannot exceed four years.

Subsection 11 of Section 75-4231, R. C. M., 1947, grants to the trustees of every county high school the power:

"To rent, lease and let to such persons and entities as the board may deem proper the high school halls, gymnasiums, buildings, and parts thereof, for such time and rental as the board may designate, and to pay over to the county treasurer all sums collected on account of such letting for the credit of the high school."

The above quoted gives broad authority to the trustees of a county high school to lease school buildings. Exact limitations are not prescribed on the exercise of the power and as a consequence much is left to the discretion of the trustees. In view of this section and Section 75-1636, R. C. M., 1947, both the county commissioners and the trustees of the high school district should execute the lease and avoid any question concerning the proper parties to sign the lease on behalf of the county.

In considering your problem, the authority of the school district to become the lessee must be sanctioned by statute. Subsection 8 of Section 75-1632, R. C. M., 1947, gives authority to every school board "to build, purchase or otherwise acquire school-houses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dispose of the same." This also is a broad power and permits the trustees of a school district to lease buildings necessary for the operation of the schools of the district. The case of *Bennett v. Petroleum County*, 87 Mont. 436, 288 Pac. 1018, approved a lease entered into by the board of county commissioners of buildings for the use of the county. The statute under which such lease was made was very broad in its terms and while it specifically authorized the leasing of buildings for county purposes yet the case

is authority for a school district to lease buildings as Subsection 8 of Section 75-1632, R. C. M., 1947, is also a broad grant of power.

The beneficial title to all school property is in the state (*Pierson v. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991) and it would serve the public interest by permitting a school district to use county high school buildings not necessary for the county high school.

It is, therefore, my opinion that the board of county commissioners and the board of trustees of a county high school may lease to a school district for a term not exceeding four years a county high school building not needed for the purpose of the county high school, which building would be used by the district for school purposes.