

**Opinion No. 6**

**School and School Districts—Use of High School District Funds to  
Construct Ninth Grade Facilities of Junior High School**

**Held: Funds realized from the sale of high school district bonds may  
be used to construct that portion of a junior high school which  
is to be used in the instruction of students of the ninth grade**

**or first year of high school. Care should be taken by the trustees not to direct any of the funds to the construction of any portion of the building to be used for the elementary grades.**

March 1, 1957

Mr. V. G. Koch  
County Attorney  
Richland County  
Sidney, Montana

Dear Mr. Koch:

You requested my opinion as to whether moneys realized from the sale of high school district building bonds may be used to construct the ninth grade portion of a junior high school. You advise me that a part of the building housing the seventh and eighth grade facilities will be constructed from funds realized from the sale of school district bonds.

In answering your question, it is necessary to consider the history of the high school building district law, which is now found in Chapter 46 of Title 75, R.C.M., 1947. The first high school district law was enacted as Chapter 47, Ex. Laws of 1933, which act authorized the trustees of a county high school to request that a commission be appointed to divide a county into high school districts. This was subsequently amended to permit the trustees of any school district maintaining a high school to request such a division. The principal purpose of high school districts as originally expressed is now found in Section 75-4605 R.C.M., 1947:

"It shall constitute an additional, and cumulative method of borrowing money and of carrying out the powers herein authorized. The high school districts created under the provisions of this act, are for construction, repair, improvement, and equipment purposes only, and it shall not be construed so as to interfere with or repeal any existing laws relating to the maintenance or operation of high schools."

The limited purpose of this law was recognized in *Pierson vs. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991, and *Larang vs. High School District "C"*, 126 Mont. 204, 247 Pac. (2d) 477. It must be recognized that the primary purpose of high school building district is to furnish the physical facilities for the education of high school students.

A junior high school is defined in Section 75-4102 R.C.M., 1947 as, "an integral unit of the public school system which comprises what is ordinarily designated as the work of the seventh, eighth and ninth grades of the school system." A high school is defined in Section 75-4101 R.C.M., 1947, as a unit of the school system comprising "some one or more of the grades of school work intermediate between the elementary schools and the institutions of higher education". It is

apparent from these statutes that a junior high school discharges in part the duties of a high school and is readily distinguishable from a school which teaches only those grades which are below the high school level.

Section 3 of Article XIII of the Montana Constitution prohibits the use of borrowed money for any other purpose than that expressed in the law authorizing the loan. A similar statutory provision is found in Section 75-3922 R.C.M., 1947, which states:

"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 for the purpose for which the bonds were issued and no other purpose."

The fact that the funds from the high school district will be expended on a portion of a building which was constructed by school district money does not preclude the use of the funds for such purpose. In *Pierson vs. Hendricksen*, 98 Mont. 244, 38 Pac. (2d) 991, high school district bonds were issued for the purpose of making improvements on the county high school building. The court said of this proposal:

"Nor is it of controlling importance that the improvements contemplated are to be made on the county high school building, legal title to which is in the county. The county, in the management of the county high school, is simply the agency of the state for that purpose. \* \* \* The beneficial title of the school property is in the state."

There are then two rules which guide the use of the funds in question. First, the money borrowed must be used only for the purpose expressed in the statute authorizing the loan. As was pointed out above, high school building district money is to be used only for the construction of high school facilities. If the ninth grade of the junior high school is one year of the educational system between the elementary grades and the higher units of education, the erection of that part of the facility used only by ninth grade students would meet the requirements of this rule. The second rule is that the beneficial title to school properties is in the state and the fact that high school building district money is spent on property the legal title to which is in the school district is not material. Latitude is granted in the use of such funds to accomplish the needs of the school system.

It is, therefore, my opinion that funds realized from the sale of high school district bonds may be used to construct that portion of a junior high school which is to be used in the instruction of students of the ninth grade or first year of high school. Care should be taken by the trustees not to direct any of the funds to the construction of any portion of the building to be used for the elementary grades.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General