

Opinion No. 73

Schools and School Districts—Purchase of Land for Athletic Field—
Elections

- Held: 1. The trustees of a school district may purchase land to be used as an athletic field and playground providing they do so after submitting the question to the electors of the district and receive an approving vote of a majority of those voting at the election.
2. The trustees of a school district maintaining a high school may purchase land for school purposes which is contiguous to land on which is located a high school building without submitting the question of the purchase at an election.

September 5, 1958

Mr. H. L. McChesney
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. McChesney:

You have requested my opinion concerning the power of the trustees of a school district to purchase land to be used as an athletic field and playground.

Under sub-division 8 of Section 75-1632, RCM, 1947, as amended, it is provided that the trustees of a school district have the power:

"To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; . . . provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, . . ."

In *State ex rel. Bean vs. Lyons*, 37 Mont. 354, 96 Pac. 922, it was held that a statute similar to sub-division 8 of Section 75-1632, RCM, 1947, was not only a grant of power but also a limitation and that trustees cannot do any of the acts referred to in a section without first obtaining the consent of the electors. While the proviso clause would seemingly limit the necessity of an election to the building or removal of school buildings and the purchase or sale of school sites, yet consideration of the statute as a whole leads to the conclusion that the legislative intent was to require a vote of the electors of a school district for the sale or acquisition of any real property for school purposes.

In sub-division 2 (b) of Section 75-4231, RCM, 1947, as amended, the trustees of a school district maintaining a high school may purchase sites for any high school purpose only at the direction of a majority of the qualified electors of the district. An exception is made however in the case of property contiguous to a site on which is located a high school building. Such contiguous property may be purchased without a vote of the electors. An outdoor school gymnasium and athletic field was held in *McNair vs. School District*, 87 Mont. 423, 288 Pac. 188, to be a necessary part of the school plant and in effect a school house within the meaning of the statute.

It is therefore my opinion that the trustees of a school district may purchase land to be used as an athletic field and playground providing they do so after submitting the question to the electors of the district and receive an approving vote of a majority of those voting at the election.

It is also my opinion that the trustees of a school district maintaining a high school may purchase land for school purposes which is contiguous to land on which is located a high school building without submitting the question of the purchase at an election.

Very truly yours,
FORREST H. ANDERSON
Attorney General