

Opinion No. 12

**SCHOOLS AND SCHOOL DISTRICTS; Schoolhouses; site—SCHOOLS
AND SCHOOL DISTRICTS; Elections; selecting site—SCHOOLS
AND SCHOOL DISTRICTS; Bonds; indebtedness limitation—
CONSTITUTIONS AND CONSTITUTIONAL LAW; Bonds;
indebtedness limitation of school district—Sections
75-1632, 75-3915 and 75-4231, Revised Codes of
Montana, 1947—Chapter 43, Laws of 1955**

- Held:** 1. That the authority of the board of trustees of a district high school to select a site for a high school shall be exercised under the direction of the qualified electors voting at an election conducted in the same manner as the annual election of school trustees in school districts of the first class.
2. That the determination as to whether a bond issue exceeds the constitutional limitation is determined at the time of the delivery of the bonds and not at the time of the election.

May 8, 1959

Mr. Victor Koch
County Attorney
Sidney, Montana

Dear Mr. Koch:

You requested my opinion concerning the manner of selecting a site for a high school in your county. You also ask at what time the determination is made as to whether a bond issue exceeds the constitutional limitation of indebtedness.

Sub-section (b) of Section 75-4231, RCM, 1947, as last amended by Chapter 43, Laws of 1955, provides that the power of the board of trustees of a school district maintaining a district high school to acquire a site for a high school.

"shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school or of the district in the case of the district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class."

This code provision has not been construed by our Supreme Court. However, a similar statute, Sub-section 8 of Section 75-1632, RCM, 1947, as amended, defines the powers and duties of school trustees generally and provides that trustees shall not:

". . . 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 and such election shall be conducted and votes canvassed in the same manner as at the annual election of school officers."

Our Supreme Court construed this section of our law in the case of *State ex rel. Fisher vs. School District No. 1*, 97 Mont. 358, 34 Pac. 2nd 522, in which case approval was given to the boards action in placing on the ballot and submitting the matter of two sites owned by

the district to the electors at the election. The board of trustees in submitting on the ballot a school site, would consider the availability, suitability and the convenience of the children of the district of the proposed site but before a school site can be used for school purposes, it must receive a majority vote of those voting at the election. Such an election precludes arbitrary action on the board and it assures the electors of a voice in the selection of the site.

It should be observed that a school site election is open to qualified electors of the district and not merely taxpayers whose names appear on the last completed assessment roll as in a bond election. Therefore, the site election should be independently conducted and without relation to the bond election in order to offer all qualified electors an opportunity to voice their opinion.

The call of the election, notice of election, hours the polls are open, and the appointment of judges of the election must be done in accord with the provisions of Section 75-1607 through 75-1610, Revised Codes of Montana, 1947.

As Sub-section (b) of Section 75-4231, RCM, 1947, was enacted after Sub-section 8 of Section 75-1632, RCM, 1947, and deals specifically with the selection of sites for high schools it fixes the procedure for the election for high school sites.

The second question concerning the limitation of indebtedness is answered by the case of *State ex rel. Galles vs. Board of County Commissioners*, 56 Mont. 387, 185 Pac. 456, where it was held:

"The additional indebtedness comes into existence only when Hill county becomes legally liable to pay it in whole or in part, or, in other words, in this instance, when the evidence of its indebtedness—the bonds or warrants—are issued, or binding contracts are made."

As Section 75-3915, RCM, 1947, provided that bonds may be issued in one or more series or installments, it must be concluded that the limitation of indebtedness must be applied at the time of the issuance of each installment of bonds.

The board of trustees, in providing for the sale of the first installment of bonds, should fix a tentative date for the sale of the next installment of the bond issue.

It is therefore my opinion:

1. That the authority of the board of trustees of a district high school to select a site for a high school shall be exercised under the direction of the qualified electors voting at an election conducted in the same manner as the annual election of school trustees in school districts of the first class.

2. That the determination as to whether a bond issue exceeds the constitutional limitation is determined at the time of the delivery of the bonds and not at the time of the election.

Yours very truly,
FORREST H. ANDERSON
Attorney General