

## Opinion No. 27

**SCHOOLS AND SCHOOL DISTRICTS; High Schools; Boards of Trustees; Powers of; Purchase of building site—SCHOOLS AND SCHOOL DISTRICTS; High Schools; Site of; Purchase of — SCHOOLS AND SCHOOL DISTRICTS; High Schools; Trustees, powers of; Options on new school sites—SCHOOLS AND SCHOOL DISTRICTS; High Schools; Trustees, powers of; Purchase of new school site—Section 75-1632, RCM, 1947—Section 75-4231, RCM, 1947—Section 75-4248, RCM, 1947.**

- Held:**
1. The board of trustees of a high school has the power to take an option on a new high school site in which option it may be provided that the consideration paid for the option will be applied on the purchase price if the option is exercised by the trustees.
  2. The board of trustees of a high school is not authorized nor does it have the power to acquire by purchase a site for a new high school building, not contiguous to a site now used for high school purposes, unless the qualified electors at an election approve the purchase of the site.

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October 10, 1961

Mr. Marshall Candee  
 County Attorney  
 Lincoln County  
 Libby, Montana

Dear Mr. Candee:

You requested my opinion concerning the following questions:

“Whether the board of trustees of a high school district has authority to take a three-year option upon a new high school site,

paying therefor for credit toward the purchase 10 per cent of the total price, without reference to the approval of the qualified electors of the district.

"Whether, if the board has such authority, it must be so exercised as to provide for or permit determination by the qualified electors of the district of the question of the location or change of site.

"When and how, in such a situation, provision may or must be made for determination by the qualified electors of the district of the question of the location or change of site."

In answering your first question as to the authority of the board of trustees of a high school district to take an option on a new high school site which is not contiguous to a site upon which there now exists a high school building, it is necessary to consider the provisions of Sections 75-4231 and 75-1632, RCM, 1947, as amended.

In 1931, our Legislature, by Chapter 148, Laws of 1931, adopted general statutes pertaining to high schools and their administration. What is now Section 75-4231, was enacted as Section 83 of Chapter 148 and generally defines the duties and powers of the trustees of high schools. While Subsection 2(a) of this statute grants the power to acquire real estate to be used as a site for a high school, yet this authority is limited by Section 2(b) where it is provided that the qualified electors of the county, in the case of a county high school, or of the district, in the case of a district high school, must approve the site at an election before the site can be used for a school building.

An obvious dilemma could arise if the question of a site was submitted and approved by the electors and it was found that the board of trustees could not acquire the real property which was approved as a site for a school building. Subsection 8 of Section 75-1632, RCM, 1947, specifically grants to the board of trustees the power to procure an option for a school site. Section 75-4231, RCM, 1947, which defines the powers and duties of the boards of trustees of high schools, contains no provision for the obtaining of an option for a possible school site. This omission, if it were construed to be conclusive, would restrict the board of trustees in securing sites for new buildings. However, this omission is not material when the provisions of Section 75-4248, RCM, 1947, are considered. This statute reads as follows:

"All high schools of the state shall be regulated and governed by the general school laws of the state in any case for which provision is not made in this code."

Because of this law, the provisions of Section 75-1632, RCM, 1947, are incorporated into the statutes governing high schools where there is no specific conflict. It is reasonable to assume that our Legislature did not intend to prevent a board of trustees of a high school from conducting school affairs in an orderly manner and, as a consequence, an option may be taken for a school site.

An option to purchase a specific piece of land is not a contract obligating the recipient of the option to acquire title. Our Supreme Court, in the case of *Ryan vs. Bloom*, 120 Mont. 443, 186 Pac. 2nd 879, quoted with approval the following definition:

"An option to purchase real property may be defined as a contract by which an owner of real property agrees with another person that the latter shall have the privilege of buying the property at a specified price within a specified time, or within a reasonable time in the future, and which imposes no obligation to purchase upon the person to whom it is given. Until the holder or owner of an option for the purchase of property exercises it, he has nothing but a mere right to acquire an interest, and has neither the ownership of nor any interest in the property itself."

The board of trustees of a high school, in taking an option on real property, does not acquire an interest in the property itself which it would not have authority to do unless approval was secured from the qualified electors as required in Subsection 2(b) of Section 75-4231, RCM, 1947. The fact that 10 per cent of the purchase price is paid for the option does not alter the character of the agreement. There is no statutory rule fixing the amount that may be paid for an option and the fact that the amount so paid is to be credited on the purchase price if the option is exercised does not alter the situation. (*Ide vs. Leiser*, 10 Mont. 5, 24 Pac. 695).

In answering your second and third questions, it is necessary to consider the limited powers of school officers. Our Supreme Court in the case of *McNair vs. School District No. 1*, 87 Mont. 423, 288 Pac. 188, stated the rule which applies here.

"The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board."

On the basis of this rule, the trustees administering the affairs of the high school are not authorized to acquire a new site for a high school, which is not contiguous to a site now used for high school purposes, without an election approving under the following provision of Section 75-4231, RCM, 1947:

". . . and the power of the board to purchase, or otherwise acquire or to sell, or dispose of a site or sites for a high school, high school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, 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 a 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."

By submitting the question as to whether the site should be purchased to the qualified electors, the trustees would be instructed whether the option should be exercised or allowed to lapse.

It is the duty of the board of trustees to observe and comply with the law. It is the duty of elected officials and alert citizens to take appropriate action to assure compliance with the law.

It is, therefore, my opinion the board of trustees of a high school has the power to take an option on a new high school site in which option it may be provided that the consideration paid for the option will be applied on the purchase price if the option is exercised by the trustees.

It is also my opinion that the board of trustees of a high school is not authorized nor does it have the power to acquire by purchase a site for a new high school building, not contiguous to a site now used for high school purposes, unless the qualified electors at an election approve the purchase of the site.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General