

**Opinion No. 3**

**SCHOOLS AND SCHOOL DISTRICTS—High school districts; title to property—Section 75-4605 and 75-1803, Revised Codes of Montana, 1947.**

- HELD:** 1. A high school district does not have the power to hold title to high school buildings as the title to high school buildings is in the school district which established the high school or in the county if the high school is a county high school.
2. A school district may issue bonds to supplement the funds of a high school district bond issue for the purpose of constructing high school buildings.

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March 19, 1963

Mr. Franklin Arness  
County Attorney  
Lincoln County  
Libby, Montana

Dear Mr. Arness:

You have requested my opinion as to whether the Libby High

School District has the power to sell the high school gymnasium and the old high school building to the school district in which the high school is located and use the funds to supplement the proceeds of a high school district bond issue to build the new high school building.

As you know, high school districts are legal entities with limited powers and are primarily established for bonding purposes. High school districts are established under the provision of Chapter 46, Title 75, R.C.M., 1947 and Section 75-4605, R.C.M., 1947 reads in part as follows:

“This act shall not prevent the exercise of powers as elsewhere in the statutes of this state provided. 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 within the county.”

From the above quoted, it is obvious high school districts are not established as operating units and their principal purpose is to provide an entity for the borrowing of money by the issuance of bonds. There is no express provision which would permit a high school district to own property. However, this is not true as to school districts as Section 75-1803, R.C.M., 1947, specifically gives authority to school districts to hold property for school purposes in the following language:

“Every school district constituted and formed as provided in these codes shall be and is hereby declared to be a body corporate, and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with, and may acquire, purchase, and hold and use personal or real property for school purposes mentioned in these codes, and sell and dispose of the same.”

Our Supreme Court in the case of Pierson v. Hendrickson, 98 Mont. 244, 38 Pac. 2d 991, holds that funds from a high school dis-

trict bond issue may be expended for improvements on a county high school, the title to which is in the county. This office in Opinion No. 38, Vol. 24, held that upon the abolishment of a county high school the title to property should be conveyed to the school district which establishes a district high school rather than to the high school building district. In the body of this opinion it is recognized that a high school district is not a proper grantee of school property.

From the above it must be concluded that your high school district has nothing to sell to the school district and as a consequence, the school district would have no basis for borrowing money to buy property, the title to which it now holds.

There is no law which precludes a school district which maintains a district high school from issuing bonds for the construction of a high school building or buildings. Also, such a school district may issue bonds to supplement funds realized from a high school district bond issue in constructing a new high school. Such a procedure should be followed here if additional funds from a school district bond issue are necessary. This offers a solution to your problem.

It is, therefore, my opinion:

1. A high school district does not have the power to hold title to high school buildings as the title to high school buildings is in the school district which established the high school or in the county if the high school is a county high school.

2. A school district may issue bonds to supplement the funds of a high school district bond issue for the purpose of constructing high school buildings.

Very truly yours,

FORREST H. ANDERSON

Attorney General