

VOLUME NO. 37

OPINION NO. 97

SCHOOL DISTRICTS AND TRUSTEES - Voter approval unnecessary for lease of school buildings for less than three years; SCHOOL SITE SELECTION - Voter approval unnecessary for lease of school buildings for less than three years; REVISED CODES OF MONTANA, 1947 - Sections 75-6602, 75-8203, 75-8209.

HELD: Pursuant to section 75-8209, R.C.M. 1947, school district trustees may lease a mobile building for a term of three years or less, to be used as a school, and may relocate that building on land already owned by the district without securing voter approval of either the building lease or the site selection. Since no site selection is required in such case, any site selection election actually held does not bind the trustees or prevent them from locating a leased school building on district owned sites rejected by the voters.

6 December 1977

Robert J. Funk, Esq.  
Garfield County Attorney  
Garfield County Courthouse  
Jordon, Montana 59337

Dear Mr. Funk:

You have requested my opinion concerning the following question:

Must the trustees of an elementary school district located in Garfield County hold a school site selection election pursuant to section 75-8203, R.C.M. 1947, as a prerequisite to opening a new school.

In your letter of request and subsequent communications, you have provided the following facts. The trustees plan to open a new elementary school and have complied, or will comply, with section 75-6602, R.C.M. 1947, which sets forth requirements for opening schools. The school building will be a mobile unit leased for three years or less and paid for with funds already budgeted for that purpose. The trustees propose to locate the building on one of two parcels already owned by the district and have already conducted a site selection election at which both sites were submitted to district voters for approval or rejection. At that election voters were also permitted to vote for or against a third proposition that there be "no new school." The voters, by substantial majorities, voted against both of the two sites and in favor of the "no new school" proposition.

Your specific question is whether the trustees may proceed with the opening of the new school, and if so, whether they may locate the school on either of the sites rejected by district voters.

Section 75-8203, R.C.M. 1947, provides in relevant part:

Selection of school sites, approval election, and lease of state lands. The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes but such selection shall first be approved by the qualified electors of the district before any contract for the purpose of such site

is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.

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The provision is ambiguous in that it is unclear whether it requires an election to be held when trustees propose to locate a new school on land already owned by the district.

Arguably the section applies only to site selections which involve the purchase of land. However, that ambiguity need not be resolved for the purposes of the present opinion since section 75-8203 is inapplicable to leases of buildings and lands. Separate provision for leasing has been made in section 75-8209, R.C.M. 1947, as recently amended by section 2 of chapter 424, Laws of 1977. That provision states:

Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

Section 75-8209 expressly authorizes the leasing of both buildings and land for "school purposes." The term "school purposes" is self-explanatory, comprehending the use of leased buildings as schools. Any lease for longer than three years requires prior approval of district voters and conversely no election is necessary for any lease of three years or less.

There is no tension between section 75-8209 and section 75-8203. Both provisions were originally enacted as part of chapter 5, Laws of 1971. "A fundamental rule of construc-

tion is that, if possible, effect shall be given to all parts of a statute. And each part of a statute must be given a reasonable construction which will enable it to be harmonized with other provisions, and give it vitality and make operative all of its provisions." State Board of Equalization v. Cole, 122 Mont. 9, 20, 195 P.2d 989 (1948) (citations omitted). The two sections are consistent with one another. The plain purpose of section 75-8203 is to require voter approval of permanent buildings and sites. Section 75-8209 requires similar approval in cases of long-term leases. In either situation the effect of the site selection is a long term one, not easily changed. In contrast short term leasing under section 75-8209 gives district trustees flexibility to meet the district's short-term needs.

In the present case only the building will be leased as the land is owned by the district. Since the district may lease land on a three year or less basis without an election and locate a building thereon, it follows that it may locate such building on land already owned by the district. In either case the duration of the site selection is delimited by the duration of the building lease.

Under sections 75-6602 and 75-8209 the trustees are vested with discretionary powers concerning the opening, leasing and siting of school buildings for terms of three years or less. That discretion cannot be delegated to the voters. "Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated \*\*\*" Dickey v. Board of Commissioners, 121 Mont. 223, 226, 191 P.2d 315 (1948), and see also State ex rel. Nelson v. Timmons, 57 Mont. 602, 608, 189 P. 871 (1920). Therefore, the election held by the trustees must be treated as "advisory," and is not binding upon the trustees.

THEREFORE, IT IS MY OPINION:

Pursuant to section 75-8209, R.C.M. 1947, school district trustees may lease a mobile building for a term of three years or less, to be used as a school, and may locate that building on land already owned by the district without securing voter approval of either the building lease or the site selection. Since no site selection is required in such case, any site selection election actually held does not bind the trustees or prevent them from locating a leased school building on district owned sites rejected by the voters.

Very truly yours,

MIKE GREELY  
Attorney General