

EDUCATION - Community college boards of trustees, authority to lease, lease/purchase, or sell property;

EDUCATION, HIGHER - Community college boards of trustees, authority to lease, lease/purchase, or sell property;

MUNICIPAL CORPORATIONS - Community college boards of trustees, authority to lease, lease/purchase, or sell property;

SCHOOL BOARDS - Community college boards of trustees, authority to lease, lease/purchase, or sell property;

MONTANA CODE ANNOTATED - Sections 20-6-603, 20-6-604, 20-6-609, 20-6-621, 20-6-625, 20-15-102, 20-15-107, 20-15-301, 20-15-404;

OPINIONS OF THE ATTORNEY GENERAL - 26 Op. Att'y Gen. No. 84 (1956), 36 Op. Att'y Gen. No. 73 (1976).

HELD: A community college board of trustees has authority to lease and/or lease/purchase property for school purposes and to sell unused school property.

30 June 1986

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
Kalispell MT 59901

Dear Mr. Lympus:

You have requested my opinion concerning the following question:

Does a community college board of trustees have the authority to lease and/or lease/purchase real property and to sell property?

The Montana Supreme Court has recognized that "[u]nder our statutes, the community college legal status is a hybrid." Ripley v. Board of Trustees of Flathead Valley Community College, 41 St. Rptr. 1117, 1118, 682 P.2d 1363, 1364 (1984). As a hybrid, community college districts have certain unique characteristics but, in many respects, have the same powers and limitations as elementary and high school districts. Burlington Northern, Inc. v. Flathead County, 176 Mont. 9, 11-12, 575 P.2d 912, 913-14 (1978); Sibert v. Community College of Flathead County, 179 Mont. 188, 587 P.2d 26 (1978). In this instance, I find that community college districts should be treated as are other school districts.

In Montana, school and community college districts are public corporations with limited powers. They may exercise, through their boards, only such powers as are conferred through law, either expressly or by necessary implication. Finley v. School District No. 1, 51 Mont. 411, 415, 153 P. 1010, 1011 (1915); Abshire v. School District, 124 Mont. 244, 247, 220 P.2d 1058, 1060 (1950). Although the powers you ask about are not enumerated among the authorized types of capital expenditures which community college trustees may make pursuant to section 20-15-301, MCA, the Legislature has generally given community college districts those powers granted to other types of school districts. Section 20-15-102, MCA, thus states in relevant part:

[T]he community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and

possess the same corporate powers as districts in this state, except as otherwise provided by law. [Emphasis added.]

This statute has been held, with respect to authority to grant tenure, as according to community college districts the same powers as other school districts. Sibert v. Community College of Flathead County, 179 Mont. at 190, 587 P.2d at 27. I find that section 20-15-102, MCA, also authorizes community college trustees to acquire and dispose of property in the same ways as other types of school districts are statutorily permitted.

The express power to lease buildings or land for school purposes is granted to school district trustees by section 20-6-625, MCA. I would, in any event, necessarily infer that community college districts have this power from sections 20-15-107, 20-15-404(3), and 20-6-621(4), MCA, which, taken together, authorize other school districts, as well as the state land board, to lease unused property and land to community college districts. The power to acquire property through a lease-purchase agreement is granted to school district trustees under section 20-6-609, MCA, recently enacted by 1985 Mont. Laws, ch. 144. The power to sell property is granted to school district trustees under sections 20-6-603 and 20-6-604, MCA. Sections 20-6-603, 20-6-604, 20-6-609, and 20-6-625, MCA, are, again, made applicable to community college boards of trustees by section 20-15-102, MCA.

Finally, I caution that section 20-15-404, MCA, directs community college trustees to adhere to sections 20-6-603, 20-6-604, and 20-6-625, MCA, including their procedural requirements. Moreover, as the Montana Supreme Court stated long ago and recently reaffirmed:

As a public corporation the school district is a municipal or quasi-municipal body and the statute granting its power must be regarded both as a grant and a limitation upon the powers of the board. State ex rel. Bean v. Lyons, et al. (1908), 37 Mont. 354, 96 P. 922.

Sibert v. Community College of Flathead County, 179 Mont. at 191, 587 P.2d at 28. Strict compliance with the procedures applicable to the lease, lease/purchase, or sale of school district property is therefore

necessary. Cf. 36 Op. Att'y Gen. No. 73 (1976), 26 Op. Att'y Gen. No. 84 (1956).

THEREFORE, IT IS MY OPINION:

A community college board of trustees has authority to lease and/or lease/purchase property for school purposes and to sell unused school property.

Very truly yours,

MIKE GREELY
Attorney General