

Opinion No. 29

SCHOOLS AND SCHOOL DISTRICTS; School District Lands; Sale of; expenditure of monies realized from sale of lands—SCHOOLS AND SCHOOL DISTRICTS; Trustees; Powers of; building fund, power to establish—SCHOOLS AND SCHOOL DISTRICTS; Budgets; building fund monies may be expended only by budget—Chapter 232, Laws of 1947—Section 75-1634, RCM, 1947—Section 75-1714, RCM, 1947

- Held:**
- 1. Funds realized from the sale of school property under the provision of Section 75-1634, RCM, 1947, may be placed in a building fund by resolution of the Board of Trustees of the school district.**
 - 2. Monies in a building fund may be expended only after the adoption of a subsequent budget, whether it be an emergency budget or the budget for the ensuing fiscal year.**

October 2, 1959

Mr. Gordon R. Hickman
Wheatland County Attorney
Harlowton, Montana

Dear Mr. Hickman:

You have requested my opinion concerning the expenditure of monies realized from the sale of lands owned by a school district. You advised me that a sale was made under the provisions of Section 75-1634, RCM, 1947, and that the trustees would like to use the funds, realized from the sale, to construct an additional school room for the district which is needed as a result of increased enrollment.

Section 75-1634, RCM, 1947, was amended in 1947 by Chapter 232, Laws of 1947, and the amendment provided in part that the monies which result from the sale:

“. . . shall be used by the board of trustees of said school district as it shall determine by resolution, for the purpose of: (1) retiring outstanding bonds of the school district; or (2) establishing a building fund for such school district; or (3) using such moneys as a part of the general school fund for the expenses of the school district; or (4) accomplishing any combination of purposes set out above.”

While the above quoted statute defines the purposes for which monies realized from sale may be used, it does not designate the time and manner in which they are to be expended to accomplish the purposes. Section 75-1714, RCM, 1947, of the budget law, limits expenditure to appropriation items found in the final budget. Section 2 of Chapter 232, Laws of 1947, which amended Section 75-1634, RCM, 1947, reads as follows:

“The provisions of this act shall be deemed and held valid notwithstanding the provisions of the budget act.”

This provision of Chapter 232, Laws of 1947, must be given effect but it does not preclude the application of the budget law to the expenditure of the money. In the interpretation of statutes, it is the policy to reconcile statutes so far as possible and make them both operative (*State vs. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472). There is no provision in the budget law for a building fund and as a consequence, under Section 75-1634, RCM, 1947, such a fund may be established by construing Chapter 232, Laws of 1947, as an implied amendment to the budget law. However, the expenditure of the money is dependent on an appropriation item in the budget as was observed above. Statutory authority to establish a building fund does not imply authority for the trustees to expend the money by resolution and without complying with the statutes defining the manner of disbursing school funds. The rule found in *McNair vs. School District No. 1*, 87 Mont. 423, 288 Pac. 188, would apply and it reads as follows:

“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.”

A similar conclusion must be reached if the proceeds of the sale are placed in the general fund.

If the funds in question are placed in a building fund and may not be used until an appropriation item is adopted in a subsequent budget, such a procedure should not prevent relief from the crowded condition due to increased enrollment. An emergency budget may be adopted by a school district after December 31, if an increase in enrollment, which was not anticipated, requires the expenditure of funds to alleviate the condition.

It is, therefore, my opinion:

1. Funds realized from the sale of school property under the provision of Section 75-1634, RCM, 1947, may be placed in a building fund by resolution of the Board of Trustees of the school district.
2. Monies in a building fund may be expended only after the adoption of a subsequent budget, whether it be an emergency budget or the budget for the ensuing fiscal year.

Very truly yours,
FORREST H. ANDERSON
Attorney General