

Tony Koenig <[tkoenig@mtsba.org](mailto:tkoenig@mtsba.org)>

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1:12 PM

Corrina:

Assuming the Board is in favor of granting the easement, the District will in effect be transferring part of its ownership rights in the affected property. In order for the Board to do so, it will therefore be necessary to either hold an election seeking voter approval of the transfer in accordance with Sec. 20-6-603, MCA; or the Board must conclude in accordance with Sec. 20-6-604, MCA, that the ownership interest to be transferred “is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the District.”

If the Board makes the appropriate findings under Sec. 20-6-604, MCA, the Board would then adopt a resolution as described in the statute, and then publish notice of the resolution in a newspaper of general circulation in the District and post notice of the resolution in three public places. The resolution would not take effect until 14 days after notice is given. During that 14-day period, any member of the public may appeal the resolution by filing an action in District Court. If no action is filed within the 14 days, the Board may then “sell or dispose of the real...property in any reasonable manner that they determine to be in the best interests of the district.”

Tony C. Koenig  
Director of Legal Services  
Montana School Boards Association  
(406) 439-2473  
[tkoenig@mtsba.org](mailto:tkoenig@mtsba.org)

Lance Melton <[lmelton@mtsba.org](mailto:lmelton@mtsba.org)>

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Corrina, one thing you may want to check is whether there is a deed restriction that would prohibit this kind of resolution. Property donated at that time likely is subject to a conditional deed and granting the right of way could trigger a repossession claim by the descendants of those who donated the land. Stranger things have happened. Better take a careful look at the deed before you proceed, ideally through obtaining a title search by a title company.

**20-6-605. Land acquired by conditional deed or at will or sufferance.** Whenever the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of the intent to repossess the land, and the trustees shall have 1 year after receipt to remove any buildings or improvements placed upon the land by the district. The trustees' failure to remove the buildings or improvements within that time constitutes a forfeiture of the buildings or improvements. Before the owner or claimant has the right to give notice of repossession, the district's intention to permanently

cease using the land must have been established by resolution of the trustees and a vote of the district's electors.

Lance L. Melton  
Executive Director, MTSBA  
863 Great Northern Blvd., Suite 301  
Helena Montana 59601  
**For Immediate Assistance, Call (406) 439-2180 (Cell)**

**20-6-603. Trustees' authority to acquire or dispose of sites and buildings -- when election required.** (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

(3) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

**20-6-604. Sale of property when resolution passed after hearing -- appeal procedure.** (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall provide notice of the resolution in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fund, building fund, general fund, or other appropriate fund, at the discretion of the trustees.