

County High School Funds—Legality of Payment to Judith Basin County.

Under the facts appearing in the opinion, the funds referred to therein were not subject to division between the various District High Schools, but constituted a part of the assets of Fergus County and should have been taken into consideration on the settlement between the counties.

Edgar J. Baker, Esq.,
County Attorney,
Lewistown, Montana.

My dear Mr. Baker:

You have submitted to this office a statement of facts prepared by the Trustees of Fergus County High School and have requested an opinion thereon.

The facts stated are: The Fergus County High School Board at the August meeting certified to the Board of County Commissioners that $4\frac{1}{2}$ mills tax levy would be required for maintenance and building purposes for the school year; 4 mills of this levy were for maintenance and $\frac{1}{2}$ mill for building purposes. This tax was levied and collected, and subsequently thereto a portion of the county of Fergus voted to segregate itself from the remaining portion, and on December 12, 1920, became Judith Basin County.

The Board of County Commissioners of Fergus County, in the adjustment of county indebtedness, directed the High School Board of Fergus County to transfer to Judith Basin County approximately \$50,000 from High School funds designated as: (1) "General Fund," (2) "Sinking Fund" and (3) "Building Fund".

The County High School is a county institution, title to which is vested in the county (Subdivision 7-b of Section 2104 of Chapter 76, Laws of 1913), and bonds issued to construct the same are county bonds. Taxes levied for the purpose of creating a sinking fund to pay off these bonds are levied on the whole county.

Hamilton v. Board of County Commissioners, 54 Mont. 301.

Section 2108 of Chapter 76, Laws of 1913, as amended by Chapter 115, Laws of 1915, provides as follows: -

"At the regular April meeting or at some succeeding meeting, called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for payment of contingent expenses and they shall present to the board of county commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the board of county commissioners must levy such tax as other county taxes are levied. * * *"

Section 2112 of Chapter 76, Laws of 1913, as amended by Chapter 119, Laws of 1915, provides:

"In any county where a county high school has been established, any school district which maintains high school classes duly accredited by the State Superintendent of Public Instruction shall be entitled on such accrediting to share in all county high school moneys levied and collected for maintenance, and the money derived from such levy shall be apportioned by the county superintendent of schools to the several accredited high schools in the county according to the average daily attendance in accredited high school classes for the school year next preceding, as determined by the said county superintendent."

Under this section, the money collected for maintenance purposes is apportioned among the several accredited High Schools in the county by the County Superintendent in proportion to the average daily attendance in High School classes for the preceding year. He should then certify to the County Treasurer and the several district clerks the amount so apportioned, and the County Treasurer should credit such District High Schools with their share of the maintenance fund, in accordance with this certificate. These maintenance funds are raised for a specific purpose, and the division of the county subsequently to the levy could not, in my opinion, affect in any way their distribution according to the terms of the Act under which it was intended distribution would be made at the time of the levy. The provisions of Section 2112 still remained in full force and effect after the county division.

I am, therefore, of the opinion that if the total amount transferred to the Treasurer of Judith Basin County for the various accredited High Schools, cut off by county division, from what is designated "General Fund," meaning thereby the general maintenance fund, was such an amount as they would have received had they remained a part of Fergus County, that they have received only that to which they are in law and justice entitled.

As to the "Sinking Fund": Section 2109 of Chapter 76, Laws of 1913, as amended by Chapter 158, Laws of 1919, as amended by Chapter 132, Laws of 1921, in part, provides:

"If such bonds are issued, the board of county commissioners, at the time of making the levy of taxes for county purposes each year, shall levy a tax for that year upon the taxable property in the county for the interest and redemption of said bonds, and such taxes must not be less than sufficient to pay the interest on said bonds for that year, and such proportion of the principal as is to become due during the year, and in any event must be high enough to raise annually, for the first half of the term, a sufficient sum to pay the interest thereon, and during the remainder of the term, high enough to pay said annual interest and to pay annually a portion of the principal of said bonds equal to the quotient produced by taking the whole amount of said bonds outstanding, and dividing it by the number of years said bonds have yet to run; and all moneys so levied, when collected, must be paid into the county treasury to the credit of the county high school and kept in a separate fund, and used for the payment of the principal and interest on said bonds, and for no other purpose; * * *

Section 2110 of Chapter 76, Laws of 1913, provides:

"Payment of Bonds.—Said bonds shall be paid, principal and interest, in the manner provided for the payment of other county bonds."

In adjusting indebtedness under the provisions of Section 1 of Chapter 226, Laws of 1919, between the old and new county, the new county is liable for a pro rata proportion of the existing debts and liabilities of the old county, and entitled to a pro rata proportion of the assets.

A sinking fund is a trust fund pledged to the payment of certain indebtedness and cannot be distributed on a division of the territory originally pledged to the payment of the debt. The sinking fund is taken into consideration in adjustment between the counties by reason of the fact that it constitutes a proper set-off to the indebtedness and reduces it by just that much. If the indebtedness (remaining after deducting the sinking fund) exceeds the value of the county property in the old county, then the new county is required to pay its proportion thereof to the old county. If the county property exceeds the indebtedness (after deducting the sinking fund), then the old county must pay to the new county its proportion of the excess. In determining the value of the county property, all buildings and their furniture, real estate, etc., shall be taken into consideration. (Section 7 of Chapter 226, Laws of 1919.) This would include the County High School building. Furthermore, there is no authority in law for paying to a District High School or to the

County Treasurer for the benefit of a District High School, as appears to be the case here, funds raised for the satisfaction of a county debt.

I am, therefore, of the opinion that sinking funds are trust funds pledged to the payment of outstanding bonded indebtedness and cannot be distributed or divided, but are taken into account by being deducted from the indebtedness they are pledged to pay, in adjusting indebtedness between the counties.

As to Building Fund:

Section 2108 of Chapter 76, Laws of 1913, as amended by Chapter 115, Laws of 1915, provides that the trustees shall make an estimate of the amount of funds needed for building purposes, etc.

Section 2111 of Chapter 76, Laws of 1913, provides:

"In case bonds are issued, the trustees in making estimates for the maintenance of the high school, *shall not include estimates for building or other purposes* for which the said bonds are issued."

This latter section would seem to preclude the High School Board from making a levy in any amount for building purposes, where bonds have been previously issued for such purposes. However, whether this levy was authorized or not, there is no authority in the statute for paying any part of this fund or any funds raised on the whole county for building purposes to a District High School, as in the case of maintenance funds. These funds were raised by a levy on the whole county for a county purpose, that is, the construction of a county building. They undoubtedly constituted a part of the assets of Fergus County and should have been taken into account in the adjustment between the two counties.

I am, therefore, of the opinion that these funds were not subject to division between the various District High Schools, but constitute a part of the assets of Fergus County, and should have been taken into consideration on the settlement between the counties.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.