

Board of County Commissioners—Authority to Reduce the Levy Submitted by the Board of Trustees of a County High School.

Chapter 209 of the Laws of 1921 held to repeal, by implication, Section 2108 of the Revised Codes of 1907, so as to allow the Board of County Commissioners to reduce the amount of levy fixed by the County High School Board.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office a letter from Mr. F. M. Divorshak of the Board of Trustees of Carter County High School, submitting the question whether the Board of County Commissioners may reduce the amount of levy fixed by the County High School Board for maintenance purposes.

A very similar question to this was decided by this office in an opinion rendered by a former Attorney General, which opinion is found in Volume 7 of the Opinions of the Attorney General, at page 251. The only difference between the question submitted there and the one in this case is, in the former case the question was submitted by an accredited High School. However, since the opinion above referred to was rendered, the Legislative Assembly of 1921 enacted Chapter 209 entitled, "An Act to Provide for the Form, Preparation and Determination of Budgets for the Expenditure of County Funds." The provisions of this chapter, so far as applicable, are as follows:

"Section 2. Not less than sixty (60) days prior to the day upon which the Board of County Commissioners of the several Counties of this State shall meet to fix and determine the levy upon the property within their Counties for taxation purposes, each and every and all County Officers, including Boards of County Commissioners, and the heads or persons in charge and control of County Institutions and Agencies shall * * * submit and file with the Clerk of the Board of County Commissioners of their respective Counties, a budget or estimate of the necessary expenditures and need for funds of their respective offices, institutions or agencies.
* * *

Section 3 provides that:

"Section 3. During the first week of the calendar month of July of each year, the County Commissioners of the several Counties shall cause to be published in the official newspaper of the County, each and every and all of the proposed budgets of estimate of necessary expenditures of the several County Officers, including County Commissioners, Institutions and Agencies of the County * * * Setting forth in said notice the day upon which the County Commissioners will approve, amend or disapprove such budgets or estimates of expenditures, which shall be not later than the second Monday in August of each year."

Section 4 is as follows:

"Section 4. Upon the day fixed in the notice, the County Commissioners shall proceed to examine such budgets or application for expenditures as may have been filed with the Clerk of said Board, and proceed to approve, amend or disapprove the same; and said budgets or estimates of expenditures as shall be finally fixed and determined by the Board of County Commissioners in accordance with provisions of this law, shall be the budgets and estimate of expenditures of the several county officers, institutions and agencies, including the Boards of County Commissioners. The Board of County Commissioners shall in accordance with the provisions of the laws of this State, fix and determine tax levies

sufficient to provide and care for and make funds available for all such budgets of all county officers, institutions and agencies."

Section 7 of the Act provides that the Act shall not be construed as defining the District Courts as county officers, institutions or agencies and provides that such District Judge or Courts shall not be required to file a budget.

Section 8 of the Act repeals all Acts in conflict therewith.

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

"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. But in no case shall the tax for such purpose exceed in one year the amount of five mills on the dollar on the taxable property of the county."

In *Panchot v. Leet*, 50 Mont., at page 316, Mr. Justice Sanner, delivering the opinion of the court, said:

"It is indisputable that the board of county commissioners has no power to make, of its own motion, a levy of taxes for county high school purposes. The establishment of county high schools, the maintenance of them, and the erection of buildings therefor, are governed wholly by the provisions of Chapter 76, Laws of 1913, from which it is perfectly clear that the initiative in the matter of raising funds lies wholly with the board of high school trustees."

In speaking of the character of the institution, the court further said:

"By the terms of Chapter 76, Laws of 1913, a county high school can be created only by the county; its trustees are a county agency; property acquired for its purposes is county property; and any obligation incurred in its behalf is a county obligation."

See, also, *Hamilton v. Board of County Commissioners*, 54 Mont. 301.

The County High School being a county agency, it necessarily follows that budgets should be submitted by it, together with the estimate of the rate required, and these are subject to the approval, amendment, or disapproval of the Commissioners, the same as are the budgets of other county agencies.

The provisions of Chapter 209, supra, as to approval, amendment or disapproval are, however, in conflict with Section 2108, requiring the Board of County Commissioners to levy the rate fixed by the High School Board, and as the two cannot stand together, Chapter 209 must by implication repeal Section 2108 so as to allow the Commissioners to amend or disapprove the estimate of the Board of Trustees of the County High School, the later statute prevailing.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.