

School Taxes—The Rate of Levy in Case of Property Transferred from One District to Another.

School taxes should be levied upon property according to the rate in the district in which the property is located on the date of the levy by the Board of County Commissioners.

In case of an excessive levy according to the rate prevailing in the wrong district, the portion thereof representing the amount according to the rate of the levy in the district in which the levy should have been made should be transferred to that district and the balance refunded to the taxpayer.

Elbert F. Allen, Esq.,
County Attorney,
Livingston, Montana.

My dear Mr. Allen:

You have requested my opinion on the following question:

“Should school taxes on property transferred from one school district to another, after the date of assessment and prior to the date of levy, be levied under the rate of the old or new district?”

According to your letter, it appears that the property belonging to Robert Aitken was, on the 30th day of July, 1920, transferred from School District No. 41 to School District No. 16, and that the assessment on this land was levied in District No. 41.

From the statement of facts in this case contained in your letter, I concur in your conclusion that the taxes should be levied at the rate of levy in the district to which the property was transferred, that is, District No. 16.

Section 995 of the Revised Codes of 1907 provides that the School Board in each school district must certify to the County Commissioners, on or before the day designated by law (first Monday in August), the number of mills per dollar which it is necessary to levy on the taxable property of the district, to enable the Commissioners to make the levy of taxes for the then ensuing year.

The property in question was transferred from District No. 41 to District No. 16 on July 30, 1920. Therefore, prior to the date levy was made, viz., on the first Monday of August, the property was in District No. 16 and not in District No. 41.

Former Attorney General Galen, in an opinion rendered to the County Attorney of Flathead County, reported in Volume 1 of Attorney General's Opinions, page 329, held as follows:

"Where the territory is transferred from one school district to another after the trustees of each district have certified to the county commissioners the amount of special tax to be levied, and after the transfer of such territory the county commissioners make levies pursuant to such certificates, the taxes collected on the territory transferred should be credited to the district to which such territory was transferred."

This opinion was referred to and affirmed in Volume 4 of Attorney General's Opinions, page 331, by Attorney General Galen, and again in Volume 5, page 78, by Attorney General Kelly.

Since the property was in District No. 16 on the date of the levy by the Board of Commissioners, the tax should be levied at the rate in that district. The tax collected and credited to the fund of District No. 41 is there through error. The part thereof, equal to the District No. 16 levy, should be transferred to the fund of District No. 16, and the balance refunded to the taxpayer in the same manner as any other wrongfully collected tax. (Sec. 2669, R. C. of 1907.)

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.