

County High School Warrants—Issuance and Registration in Excess of Funds on Hand — County Institution or Agency—Emergency Provision of Budget Law.

A County High School is a county institution or agency within the meaning of Chapter 209 of the Laws of the 17th Legislative Assembly.

County High School Boards may not issue warrants for maintenance and other purposes in excess of the amount fixed in their budget until such time as the Board of County Commissioners has determined that an emergency has arisen for allowing a greater sum to be expended, in which event additional warrants may be issued, provided the total does not exceed in the following year the amount of 5 mills on the dollar of the taxable property of the whole county.

J. E. Kelly, Esq.,
County Attorney,
Boulder, Montana.

My dear Mr. Kelly:

You have submitted to me the question whether a County High School may issue warrants for maintenance purposes and have them registered after the exhaustion of funds raised by the usual levy for High School maintenance purposes.

While the County High School has many of the features of a school district, it is nevertheless a county institution and not a school district.

In *Panchot v. Leet*, 50 Mont. 314, in speaking of a County High School, the court 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 provisions of Section 5 of Chapter 209 of the Laws of 1921 are as follows:

"Each and every and all County Officers, institutions and agencies, including Boards of County Commissioners, shall be limited in their expenditures for the fiscal year for which such budget was made, to the amount and in the manner as in such budget, as finally approved, shall be set forth, provided that should any emergency or just cause arise for the allowance of a greater sum or sums for any particular office, officer, institution or agency of the county, and the County Commissioners

shall have determined that such is an emergency or just cause for the allowance of the additional amount, they may permit expenditures to be made for such emergency or just cause and include the same in their estimate for tax levy in the succeeding fiscal year."

Section 6 of this chapter provides:

"All budgets or applications for expenditures prepared and filed in accordance with the provisions hereof, shall be public records, and no warrant shall be drawn for any expenditure except those provided for in said budget."

While the provisions of Section 5 would allow the County Commissioners to permit expenditures to be made in case of an emergency or just cause giving rise to the necessity, and include the same in their estimate for tax levy in the succeeding year, Section 2108 of Chapter 76 of the Laws of 1913, as amended by Chapter 115 of the Laws of 1915, provides that "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."

The conclusion to be drawn from the foregoing is that the County High School is a county institution or agency within the meaning of Chapter 209 of the Laws of 1921, and that the County High School Board is limited in its expenditures to the amount fixed in its budget as finally set forth and approved, until such time as the Board of County Commissioners shall have first determined that an emergency or just cause has arisen for allowing a greater sum to be expended, in which case additional warrants may be issued; provided, the total amount issued, when added to the ordinary requirements of the High School for maintenance and other purposes, including a sufficient amount to cover requirements of District High Schools entitled to share in the maintenance funds in proportion to the average daily attendance in High School classes, does not exceed in the following year the amount of 5 mills on the dollar of taxable property of the whole county.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.