

County Unit Sub-District—Authority to Issue Warrants in Amount Allowed by the County Unit Board, Though in Excess of Actual Cash Set Aside for the Sub-District—Authority of Board to Close School.

A local school district may issue warrants up to the amount allowed by the Board of Trustees of the Rural School District as the budget of the local or sub-district and included in the tax levy, though the taxes are delinquent.

Under Chapter 211 of the Laws of 1919, the Rural Board is not authorized to interfere in any way with local control in the sub-districts, except that they have supervision over the budget of the local district.

The Rural District Board has no authority to order any district school closed when the full amount of the tax levied has not been expended.

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

My dear Miss Trumper:

You have submitted to this office the following questions:

1. Is it lawful for the Trustees of Sub-district No. 56, Chouteau County, to issue warrants up to the total amount allowed by the County Unit Board, even though it be in excess of the actual cash set aside for the Sub-district, and will necessitate the registration of warrants?

2 Has the County Unit Board authority to order any school closed in any sub-district when the actual cash set aside for that sub-district has been exhausted, although that sub-district is still within its original budget allowance, and all warrants issued in excess of the actual cash on hand for that sub-district are covered by the levy made by the County Commissioners, and of course are covered by delinquent taxes?

It appears that approximately 70 per cent of the taxes have been collected in that county, and about the same percentage will be available for the district out of the total amount levied.

From an opinion addressed to Mr. H. F. Miller, County Attorney of Chouteau County, in which the powers of the Rural Board and Local Boards of Trustees were discussed, I quote the following:

"Section 5 of this Act (Chap. 211, Session Laws of 1919) provides:

"The board of trustees of every Rural School District shall have only the powers and shall perform only the duties enumerated in this act. The board of trustees of each sub-district of the rural school district shall have all the powers and perform all the duties imposed upon trustees of school districts according to the provisions of Chapter 76 of the Session Laws of the Thir-

teenth Legislative Assembly and acts amendatory thereof and supplementary thereto, except, as modified by the terms of this Act.'

"This section evidently intends to limit the control of the sub-district to the Local Board, since they have all the powers of Trustees in any ordinary district, except such as are expressly given to the Rural Board."

The powers given to the Rural Board are levying of taxes and issuing of bonds, and such powers as are necessarily incident to the carrying out of these express powers.

Quoting further from the opinion referred to regarding the powers of the Rural Board to change or amend the budget submitted by the Local Boards under the provisions of Section 5 of this Act, we find the following language employed:

"From the provisions of this section, it is apparent that the Board may change the estimates submitted by the Rural Boards by adding thereto certain items, and it no doubt has the power to modify or change the budgets so as to equalize as nearly as possible the expenditures for certain purposes in the various sub-districts. * * *

"Has the Rural Board any further control over these funds when once they have been distributed as required by the foregoing provisions? If, by control, is meant the power to dispose of any part of these funds by issuing warrants thereon, then it must be admitted that no such provision is contained in the Act, the Act not even providing from what funds the expenses and honorarium (of the Rural Board) shall be paid." I further quote the following:

"Boards (Local Boards) conducting their district, out of harmony with reasonable expenditures, should be left to their own resources. They may have power to draw warrants, but have no power to levy taxes, at least so far as the Rural District is concerned."

Subdivision 9 of Section 302 of Chapter 76 of the Laws of 1913 provides, in part, as follows:

"Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; Provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied."

In the case of a Rural District, the tax levy is upon the district as a whole. However, I can see no reason why this provision would

not justify warrants to be issued for taxes that had been levied but were delinquent, since the taxes are bound to be collected sooner or later.

I am, therefore, of the opinion that the trustees of the district may issue warrants up to the amount allowed by the Board of Trustees of the Rural School District as the budget of the local or sub-district and included in the tax levy, even though the taxes are delinquent.

Answering your second question, it is apparent from the provisions of Section 5 of Chapter 211, Session Laws of 1919, above quoted, that the Legislature did not intend to authorize the Rural Board to interfere in any way with local control in the sub-districts.

However, their general power of supervision over the budget of the local district and their power to levy taxes would necessarily limit expenditures in the sub-districts to those which the Rural Board considered fair and reasonable and necessary in order to equalize expenditures in each sub-district. This would not, in my opinion, extend to ordering any district school closed when the full amount of the tax levied has not been expended, this being a matter regarding which no authority is given to the Rural District Board by the Act creating it.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.