

County Commissioners—Power to Transfer Money From the General Fund to the High School Fund.

The Board of County Commissioners have no authority to transfer money from the General Fund of the county to the County High School Fund, unless, at the end of the fiscal year, there is a surplus in the General Fund.

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Register State Lands,
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My dear Mr. Bailey:

I am in receipt of a request forwarded by the County Commissioners of Custer County for an opinion on the following question:

“Have the County Commissioners the right to transfer money from the General Fund of the county to the County High School Fund, to be returned to the General Fund at a later date?”

It has been held that the County High School is a county institution.

Panchot v. Leet, 50 Mont. 314.

In that case Mr. Justice Sanner, speaking for 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. * * *

“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 purpose 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.

Section 2108 of Chapter 76 of the Laws of 1913, as amended by Chapter 115 of the Laws of 1915, makes provision for levying taxes 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. 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."

A difficulty at once presents itself, in that if the County High School were permitted to borrow from other funds of the county, raised for the purpose of conducting its affairs as a county, there is a possibility that funds so borrowed could not be returned by reason of the fact that the 5-mill limitation, when apportioned among other high schools of the county under the provisions of Chapter 119, Laws of 1915, would not produce sufficient funds for this purpose.

Furthermore, by a decision rendered by our Supreme Court, in the case of State ex rel. Board of Commissioners v. District Court, 62 Mont. 275, it was held that no transfer can be made from one county fund to another, except as to surplus. The court in that case used the following language:

"Heretofore we referred to the ordinary resources of the poor fund. Under certain circumstances moneys may be transferred from any other county fund (except the school fund) to the poor fund, but the all too-prevalent notion that such transfers may be made indiscriminately is erroneous. It is only the surplus in the other funds that may be transferred (Sec. 2921, Rev. Codes)."

Chapter 209 of the Laws of 1921 limits the use of funds to the purpose specified in making up the various budgets and largely changes the nature of the General Fund so as to charge it with the budgets of the various agencies of the county, including the estimates of the Commissioners, and the Commissioners are without authority to deplete the various budgets or funds included in the General Fund for specific purposes in order to supply funds for some county agency that has exhausted its funds.

For the foregoing reasons, I am of the opinion that money cannot be transferred to the County High School Fund from the General Fund

unless, at the end of the fiscal year, there is a surplus in the General Fund, or unless it clearly appears at an earlier date that there is a surplus in that fund.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.

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