

School Board—Power to Direct County Commissioners to Make Ten Mill Tax Levy—Power to Issue Warrants.

Section 1203 of the Revised Codes of 1921 construed not to authorize the School Board to direct the County Commissioners to levy a tax.

The Trustees of a School Board have authority to certify to the County Commissioners the amount of money needed.

The Trustees of the School Board, under the facts appearing in the opinion, have no authority to issue warrants.

A. A. Alvord, Esq.,
County Attorney,
Thompson Falls, Montana.

My dear Mr. Alvord:

You have submitted to this office the question of whether a School Board can direct the County Commissioners to make a special levy of 10 mills against the property of the district and thereafter proceed to issue and register warrants against the district in anticipation of its collection. You state that such action was taken by the School Board on March 20, 1922.

Section 1203 of the Revised Codes of 1921 provides as follows:

“On or before the second Monday in July the board of trustees of each school district shall certify to the county commissioners the amount of money needed by the district, over and above the amount apportioned to it by the county super-

intendent under the provisions of section 1204 of this code to maintain the schools of said district, to furnish additional school facilities therefor, and to furnish such appliances and apparatus as may be needed, and, in districts of the first and second class, to maintain a school term of at least nine months in each year; * * * and the board of county commissioners shall thereupon levy a special tax for such purposes, not exceeding ten mills per dollar on the taxable property of the district, such tax to be levied at the same time and in the same manner that other taxes are levied, * * * and shall be collected in the same manner as other county and state taxes, * * * ”

It is apparent that, under this section, the School Board has no authority to direct a levy of 10 mills or any other less number. They merely certify to the County Commissioners the amount needed, and this is done on or before the second Monday in July.

While it was held by former Attorney General Ford in Volume 8 of Opinions of Attorney General, at page 378, that a special levy in excess of 10 mills, authorized by a vote of the taxpaying freeholders of the district at an election called for that purpose, was levied when the favorable result had been certified to the Board of County Commissioners by the School Board, yet from the form in which the statute prescribes the question shall be submitted—“Shall the Board of Trustees of this District be authorized to make a levy of..... mills”—it is apparent the statute contemplates an immediate levy.

Furthermore, school boards are boards of limited powers and may exercise only such powers as are expressly given or necessarily implied.

Keeler Bros. v. School District No. 3, 62 Mont. 356, 205 Pac. 217.

The purpose of a special levy in excess of 10 mills is to meet an emergency or deficit, but if warrants could not be drawn in anticipation of its collection until after the meeting of the Board of County Commissioners in August, its purpose would entirely fail, since the school would have to be closed, in which case there could be no deficit and hence no reason for the special levy.

In the case of State ex rel. Shapley v. Board of Commissioners of Yellowstone County, 12 Mont. 503, at page 505, the court said:

“The trustees of the school district have no power to levy a tax to secure the money which is necessary to pay the claim of the relator. Their authority is also restricted by the clause providing that they cannot draw a warrant on the county treasurer in favor of any person, ‘unless there is money in the treasury to the credit of such district.’”—citing Comp. Stats. div. 5, Sec. 1869.

Subsequently, this provision, prohibiting warrants to be drawn unless there is money in the treasury, was amended by adding the provision allowing warrants to be drawn in cases where taxes had been levied, but not collected, for the payment of current expenses. This amendment was necessary, since school terms begin in September but taxes are not collected until December.

I, therefore, agree with you in your conclusion that the School Board has no authority to issue warrants under the proceedings taken by them at their meeting held March 20th, since no levy has yet been made out of which the warrants can be paid.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.