### Opinion No. 268

#### Schools—Finance—Levies—Warrants
#### —Statutes.

HELD: (1) The ten mill levy pro-
vided for in Chapter 179, Laws of 1933,
does not relate to high schools.

(2) Section 4, of Chapter 160, Laws
of 1933, makes it mandatory upon the
board of trustees to retire outstanding
warrants by one or the other of the
methods provided.

———

July 10, 1933.

Your request for an opinion is as
follows:

"1. Chapter 179, session laws of 1933
amends section 1203 of the R. C. M.
1921 as amended by chapter 145, ses-
sion laws of 1929. This section pro-
vides for a **Reserve Fund** for elemen-
tary and high schools. It states that:
'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, * * *.'"

"Question: Does this mean that a
part of the ten mill district levy may
be used for the purpose of creating a
reserve fund for the high schools main-
tained by the district?

"2. Chapter 160, Laws of 1933, pro-
vides for funding school district war-
rants outstanding June 30, 1933. In
section 3 it states: '* * * may provide
for the payment of such warrants * *
* *.' In section 4 it states: '* * * must

immediately prior to or at the time
* * *.'

"Question: Is it compulsory that school trustees either issue funding bonds to retire all outstanding warrants or that they make a levy to retire such warrants before July 1. 1936?"

Section 1203, R. C. M. 1921, is incorporated in Chapter 97, Part III of the Political Code. The chapter comprises Sections 1201 to 1218, inclusive; Section 1203 was enacted in 1901, and 1211 and 1212 in 1921 at the Extraordinary Session. The balance of the chapter was enacted either in 1895 or prior thereto. The entire chapter deals exclusively with the "common schools," except that in Sections 1211 and 1212, enacted in 1921, reference is made to "high schools," but such reference relates only to the method of distributing the revenues received from the Federal Government for certain "bonuses, royalties and rentals."

In State v. Dawson County, 87 Mont. 122, at page 133, our Supreme Court held that "high schools" is comprised in the term "common schools." In that case, however, the court said: "Under constitutional authority, the legislature may either leave the matter of high school education to the several school districts of a county or provide a different method of rule or government for this class of 'common schools'."

Our legislature, in all matters of revenue, has very clearly and distinctly, provided a different method for our high schools and our "common schools" or elementary schools. The term "common schools" is frequently used in the statutes in a way that the term is clearly meant to apply to what is designated in later statutes "elementary" schools, and is clearly intended by such use to differentiate between such schools and high schools. This conclusion cannot be successfully contraverted when the term "common schools" is analyzed as used in such statutes as 1201, 1202 and others. The meaning given to common schools in State v. Dawson County, supra, may subsequently, and probably will, lead to wiping out entirely the distinction between common and high schools in matters of revenue and in all other particulars, but certainly the legislature up to 1933 has clearly maintained a distinction be-

tween the two classes of schools in all matters relating to their revenues.

Going back now to Section 1203 originally enacted in 1901, amended in 1907, in 1913 and again in 1919 and appearing in our present code as variously amended: The section as it appears in Revised Codes of 1921 was amended by Chapter 145, Laws of 1929. and again by Chapter 179, Laws of 1933. Nowhere in the checkered career of the section is any reference made to any school except district or common schools, except 1211 and 1212 heretofore referred to. Up to 1921 "common schools" were used to designate elementary schools. Thereafter the term employed to describe the elementary schools was "district" or elementary schools.

Chapter 179, Laws of 1933, is the first instance where any reference has been made in the statutes that tends to confuse the provision of the statutes relating to the revenues of the two kinds of schools, and this is done in an amendment to a section of the 1921 codes and the amended section is a part of a chapter heretofore devoted exclusively to "common or district" schools. No reference is made to high schools in the title of the 1933 amendment, and the meaning of the 1933 act, in its application to high schools, is not clear. Chapter 145, Laws of 1929, does not refer to high schools, but the same provision containing the same wording about the 10 mill levy is in both the 1929 act and the 1933 act. In both acts the phrase appears, "such special tax shall be levied upon each taxpayer of such **district**." As the 1929 act has been construed, in practice, as applying to elementary schools only, it would appear that the reference to high schools in the 1933 amendment was thrown into the amendment without any purpose to have the 10 mill provision in the latter part of the act apply to high schools.

Furthermore, high school revenues are produced by a **county-wide levy,** and the provision in Section 1203 relating to the 10 mill levy makes such levy **"upon each taxpayer of the district."** Again, no provision is made for the distribution of the revenues derived from the 10 mill levy between the high schools and the common or elementary

schools. If it be assumed that the high schools should have any portion of the 10 mill levy, the distribution would have to be made by arbitrary ruling. And, again, Section 86 of Chapter 148, (Subchapter 5) Laws of 1931, provides that the high school levy for maintenance shall not exceed 7 mills.

We are therefore of the opinion that the 10 mill provision of the 1933 amendment to Section 1203 does not relate to high schools.

Replying to your second question, we are of the opinion that Section 4 of Chapter 160, Laws of 1933, makes it mandatory upon the board of trustees to retire outstanding warrants by one or the other of the two methods provided.