

Opinion No. 184.

**High School Pupils—Schools—
Districts, high school—County Board
of Supervisors—Funds—Pupils—
Budget, School—Levy, School.**

Held: The per capita cost per high
school pupil given for budgeting

as provided for under the provisions of Section 1263.5, Revised Codes of Montana, 1935, as amended, and also taking into consideration the provisions of Section 1, Chapter 191, Laws of 1943, may be increased and spent for high school purposes.

March 3, 1944.

Miss Elizabeth Ireland
Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have submitted the following question:

"Can the per capita cost per high school pupil provided for budgeting in Section 1263.5, Revised Codes of Montana, 1935, be increased and spent for high school purposes, by means of a levy voted on the school district, by the qualified electors of the school district?"

Under the provisions of Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 64, Laws of 1941, a high school district is limited in its budget to certain amounts therein specified, based upon the number of eligible pupils enrolled. However, under the provisions of Chapter 191, Laws of 1943, when it shall appear to the satisfaction of the board of trustees of any high school and the county board of school supervisors, that because or on account of an anticipated increase in amounts required for payment of salaries and other maintenance and operating expenses for any school year, the maximum amount which may be budgeted for such high school during such year, as set forth, specified and determined in the manner provided for by Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 166, Laws of 1939, and Chapter 64, Laws of 1941, will not provide sufficient funds for such additional maintenance and operating expenses during such school year, then, and in that event only, the amount of the budget for such school year, as set forth, specified and provided in said Section 1263.5, Revised Codes of Montana, 1935, as amended, may be increased under the provisions of Chapter 191, Laws of 1943, by adding to such maximum amount not to exceed ten per centum (10%) thereof. And

all funds received from the federal government may be expended and shall not be included in the maximum therein set forth or provided in said Section 1263.5, as amended, or by said Chapter 191, aforesaid. Under the provisions of Section 1263.11, Revised Codes of Montana, 1935, as amended by Chapter 131, Laws of 1941, the board of county commissioners would make a county wide levy to meet the required amount.

Should the amount allowed to be budgeted for under the provisions of Section 1263.5, as amended, plus the additional increase of ten per cent allowed under the provisions of Section 1, Chapter 191, Laws of 1943, be insufficient, then the school district may vote upon itself an additional levy in accordance with the general school laws pertaining to the voting of additional levies by school districts as provided for under the provisions of Sections 1219 to 1223, Revised Codes of Montana, 1935, according to the provisions of Section 1263.5, which among other things provides:

"... provided further, that nothing herein contained shall be construed as preventing any school district from voting upon itself an additional levy for high school purposes, in accordance with the general school laws pertaining to the voting of additional levies by school districts. . . ."

Thus it is my opinion that the per capita cost per high school pupil given for budgeting as providing for under the provisions of Section 1263.5, as amended (and also taking into consideration the provisions of Section 1, of Chapter 191, Laws of 1943) may be increased and spent for high school purposes. In the event these amounts be insufficient, then the school district may vote upon itself an additional levy for high school purposes in accordance with the general school laws pertaining to the voting of additional levies by school districts as provided for under the provisions of Sections 1219 to 1223, Revised Codes of Montana, 1935, inclusive, bearing in mind, of course, the constitutional and statutory limitations as to such indebtedness.

Sincerely yours,
R. V. BOTTOMLY
Attorney General