

**County High School, Funds of. Funds, Transfer of County.
County Commissioners, Power to Transfer Funds. Trustees,
Cannot Contract Beyond Available Funds.**

The Board of County Commissioners have no authority to transfer money from any fund of the county to the high school fund of the county, and the Board of Trustees of a county high school cannot borrow money or assume any obligation in excess of the funds on hand, or to be raised by taxes already levied.

Helena, Montana, June 7, 1909.

Hon. J. T. Vaughan,
County Attorney,
Big Timber, Montana.

Dear Sir:

I am in receipt of your letter of the 3rd instant, submitting for the consideration of this office the question:

May the board of county commissioners transfer money from the general fund of the county to the county high school fund, the same to be returned to the general fund when taxes are collected.

As a business proposition the procedure indicated by the question would, perhaps, be good financial policy; but the question here is, has the board the abstract authority to do this.

The board of county commissioners has only such power conferred by statute or such as is necessarily implied from the power granted.

State ex rel. Lambert v. Coad, 23 Mont. 131;

Williams v. Commrs. 28 Mont. 360.

Section 2598, revised codes, requires the county board to:

"Fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund."

Section 2921, revised codes, authorizes the county board to transfer surplus money from one county fund to another fund, "except the school fund."

Both of these sections are code sections, (Section 3825 and Section 4256, Political Code of 1895.), and at the time of their adoption had no reference to the county free high school fund, for that fund did not exist at all until 1899, (Session Laws 1899, p. 59), and no authority is conferred upon the county board by any of the county free high school laws to deal with the high school fund as it does other funds.

Section 918, et seq., Revised Codes.

The high school fund is maintained by taxes levied at the initiative of the board of trustees.

Section 925, Revised Codes.

It is a fund created by a special tax, levied in a special manner provided for by a special law, and while it is a county fund in a sense, yet it is a specific fund and cannot be mingled with other county moneys.

Section 930, revised codes, provides that the board of trustees of a high school:

"Shall not, however, make any purchase or enter into any contract whereby obligations are assumed in excess of the amount of funds on hand or available through the levy of taxes for the current year, or the issuance of bonds."

If the board of high school trustees obtained money from the general fund of the county they would be assuming an obligation and entering into a contract in the same manner that they would if they borrowed money from some other source, for they would stand pledged for the repayment of the money borrowed, and

"Taxes to be levied and collected next year are not available

for the current year, hence they cannot be considered at the present time, nor at any time prior to their actual levy."

Opinions Attorney General 1906-08, p. 173.

But where the tax has been actually levied the amount of the tax roll becomes revenue for the current year and may be drawn against and used for the same purpose that it could be used were the taxes actually paid in.

Opinion Attorney General 1905-06, p. 218.

Taxes for the present year cannot be levied prior to the second Monday in August.

Section 2598.

Hence, the board of county commissioners cannot legally make any transfer of money from the general fund of the county to the county high school fund, nor can the trustees of the county high school legally draw any warrants to be paid out of the next levy of taxes. However the law does not specify any particular time at which the high school trustees shall make their certificate of estimate of taxes to be raised for the high school to the county board, (section 925, revised codes.), except that such estimate must be made in time to give the county board the opportunity to act thereon on the second Monday of August of each year, and if the high school trustees were to meet now and make their estimate and the county commissioners would agree to make such levy (if such board has any discretion to refuse to make such levy under said section 925), the trustees might proceed with their repairs and when the levy is made on the second Monday in August they could then draw their warrants against the fund.

This will obviate any necessity of any transfer of funds and will occasion but little delay.

This latter is a mere suggestion, for the trustees can make no legal contract prior to the time the tax levy is actually made by the board of county commissioners.

Very truly yours,

ALBERT J. GALEN.

Attorney General.