

Schools, County High, Authority of Trustees to Levy Taxes for Building Purposes. School, County High, Authority of Trustees to Expend More Than \$10,000 for a Single Purpose. Trustees, of County High School, Authority to Expend Money for Buildings. Elections, Authorizing the Erection of County High School Buildings.

Trustees of a county free high school have authority to levy taxes for building purposes, not exceeding more than ten mills in any one year.

Such trustees cannot expend a sum in excess of \$10,000 for the erection of school buildings without submitting the question to a vote of the electors. Such elections should be ordered by the board of county commissioners, and a notice thereof given in the same manner as that of other elections called by the commissioners.

The expenses of such elections should be paid out of the general fund of the county, the same as other special elections.

Helena, Montana, April 7, 1910.

Hon. W. E. Moore,
County Attorney,
Philipsburg, Montana.

Dear Sir:

I am in receipt of your letter of April 7, requesting an opinion upon the following questions:

"1. Can such trustees levy taxes for building purposes in excess of \$10,000.00, without a vote of the electors?

"2. Can such trustees expend a sum in excess of \$10,000.00 for any single purpose, such as the erection of a school building, without a vote of the electors of the county, even though the

money be on hand already collected by levies to be used for such purpose?

"3. If an election, authorizing such expenditure, be necessary by whom should election be authorized or ordered, by such trustees or the board of county commissioners?

"4. Out of what fund should expense of election be paid?"

In answer to your first question, you are advised that the trustees of a county free high school have authority to levy taxes, for building purposes, under section 925, revised codes, provided that they cannot in any one year make a levy of more than ten mills, which levy includes, also, the amount necessary to pay teachers wages and contingent expenses of maintaining the school.

The board, having the express authority to make a ten mill levy, it necessarily follows that they can exercise this power, notwithstanding the fact that such levy might produce more than \$10,000.00, or if they make the ten mill levy one year and it produces several thousand dollars in excess of the amount necessary for teachers wages and contingent expenses, the law does not require them to use this excess during that year, nor prevent them from making a similar levy for the succeeding year, even if the excess for the succeeding year will make the total excess greater than \$10,000.00.

See Opinions of Attorney General, 1906-08, page 257 ;also an opinion to County Attorney Kelly, of March 11, 1909, a copy of which I herewith enclose.

In answer to your second question, you are advised that the trustees cannot expend a sum in excess of \$10,000.00 for the erection of a school building without first submitting the question to, and receiving the approval, of the electors of the county.

The fact that the cash is already to the credit of the school, as the result of tax levies made pursuant to the law considered in the answer to your first question, makes no difference, as the constitution prohibits an expenditure in excess of \$10,000.00, without the consent of the electors.

(See Opinions of Attorney General 1906-08, p. 173.)

In answer to your third question, you are advised that the expense of such special election should be paid out of the general fund, the same as the expense of any other special election ordered by the board of county commissioners.

Section 925, revised codes, expressly states the purpose for which the money raised by tax levies may be used; namely, for building purposes and for the payment of teachers wages and contingent expenses, and there is no provision authorizing any of such money to be used for the purpose of paying the expenses of a special election.

Section 926, which relates to the submission of the question of issuing bonds to the qualified electors provides that it should be done

"in the manner provided by law for the issuance of other county bonds."

This provision clearly implies that the expense of a bond election should be paid for out of the general fund, the same as the expenses

of other bond elections, and as the submission of the question of authorizing the board to expend more than \$10,000.00 is, on principal, the same as submitting the question of issuing bonds, it would follow that the expenses of election should be paid in the same manner.

Very truly yours,

ALBERT J. GALEN,

Attorney General.