

Tax of School District, Failure to Levy. School Trustees, Authority to Borrow Money for Their District to Pay Current Expenses.

Where the school trustees neglect to make a special tax levy for their district, and have contracted with teachers for the school year, they have authority to borrow the necessary funds

to pay the current expenses until such time as they can certify the special tax levy on the succeeding year to meet such expenses.

Helena, Montana, February 15, 1909.

Hon. Thomas Dignan, County Attorney, Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of the 5th inst., regarding the failure of the clerks of schol districts Nos. 1 and 4, Valley County, to notify the Board of County Commissioners to levy a special tax for each of these districts, and as a result of such failure neither of these districts at the present time has funds to pay the current expenses of the schools for the balance of the year. You request an opinion as to whether there is any method by which the board of trustees can borrow the necessary money to pay such current expenses, or if there is any other way by which they can secure such money.

Section 881, among other things, provides that "said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district." Section 883 provides that the board of trustees shall be liable as trustees, in the name of the district, for all debts legally contracted, under the provisions of this title, and that they shall pay such liabilities out of the school moneys to the credit of such district.

These sections, apparently are broad enough to give the trustees authority to borrow, in the name of the district, the necessary funds to pay the current expenses of maintaining the school for the balance of the term, and if they can succeed in borrowing the money in the name of the district the district would undoubtedly be liable for any note given by the trustees whenever there was school moneys on hand to the credit of such district.

See: Jay v. School District, 24 Mont. 229.

If no one was willing to loan money upon a note signed by the trustees, as trustees, and in the name of the district, then the only other recourse would be for the trustees, or other responsible parties, to borrow money and give their personal note and trust to the future action of the district in providing for the payment of the same.

In addition to the four mill levy made by the County Commissioners, pursuant to Section 994, the School Trustees of a district have authority, under Section 995, to certify to the County Commissioners a special levy of not to exceed ten mills.

If the trustees can borrow money in the name of the district, or otherwise, then it would seem that this year they could make their special levy high enough to not only pay the current expenses of the coming year but also to take up the debt incurred for paying the balance of the current expenses for the present school year.

Section 830 provides that the Schol trustees shall have authority to issue warrants in anticipation of school moneys which have been levied but not collected for the payment of current expenses of schools. There-

fore, immediately after the board certifies their special levy to the County Commissioners, pursuant to Section 995, and the commissioners have made such special levy pursuant thereto, the trustees would have a right to issue warrants and take up the indebtedness theretofore incurred by them.

Very truly yours,

ALBERT J. GALEN,

Attorney General.