

Special School Tax. Levy, Special School Tax. Tax, Special School, Levy Of. Trustees, Levy Tax by. County Commissioners, Power Of to Levy Special Tax. School Districts, Time of Special Tax Levy.

Trustees of school districts shall send special tax levy to county board prior to time of county levy but slight delay will not invalidate tax if commissioners subsequently make the levy.

August 24th, 1911.

Hon. C. L. Crum,
County Attorney,
Forsythe, Montana.

Dear Sir:

I am today in receipt of a letter from the county superintendent of Rosebud county relative to special school taxes in some of the districts of that county. The superintendent appears to be of the impression that she committed a very serious error in instructing some of the school boards in that county to the effect that they had to the third Monday in August send in their levy of special taxes. This, she said, arose from a misunderstanding on her part with the county clerk. She is also of the impression that at least two of the districts

will be seriously handicapped unless this special levy can be made. It is probable that the matter has never been called to your attention, as the superintendent seems to think that the error is fatal. I do not think, however, that it is a very serious mistake but believe that under the law the levy may yet be made, and I thought I would take the liberty of calling your attention to the matter rather than discussing the law with the superintendent.

Section 995 of the Revised Codes provides that

"On or before the day designated by law for the commissioners * * * to levy the * * * taxes, the school board * * * shall certify to the commissioners the number of mills per dollar which it is necessary to levy, * * * not to exceed ten mills, to raise a special fund to maintain the schools * * * and in districts of the first and second class the trustees thereof, must make such levy, or so much thereof, as may be necessary * * * and the county commissioners shall cause the same to be levied at the same time that other taxes are levied, and the amount of such special tax shall be assessed * * * and shall be placed in a separate column of the tax book, which shall be headed 'Special School Tax'."

Section 2598, of the Revised Codes, provides that the board of county commissioners shall fix the rate of county taxes on the second Monday in August. It appears from the statement that two of the school districts did not send in their special tax levy until after the second Monday in August. The question presented therefore, is:

Has the board of county commissioners authority to now cause to be placed in a separate column of the tax book, this tax levy so made and determined upon by the school boards?

On this question some conflicting authorities are cited in 37 Cyc. 975,

45 Am. Dig. (Cent. Ed.) 810 et seq.

The question is one of purely statutory construction and as the statutes in the various states differ, the decisions thereunder are of little importance as a guide, except as to the general principle involved.

In *Bright v. Halloman, trustees, etc.*, 75 Tenn. 309, 7 Lea. 309, the court had under consideration the validity of a tax levy for a school district, which is there denominated "additional school tax" instead of a "special school tax," as in our statute. The statute of Tennessee required such "additional school tax" to be levied at the first quarterly term of the year, which ended prior to the first of July, but the tax in fact was not levied until during the month of July, and it was claimed that the levy was, for that reason, illegal. But the court, in discussing the matter, said:

"It is said the tax should have been levied at the first quarterly term of the year, and not in July; but we do not believe the time when levied, affects the validity of the tax."

Bright v. Halleman, 7 Lea. 309.

In the state of Ohio it was held that although the law authorizing the levy required that the same be made in June, yet a levy made in

September was not invalid, for the reason that the statute was directory and not mandatory.

Dexter v. Comes, (Com. Pls.) wkly. Law Bul'tn, 364.

In considering a similar question, the supreme court of Washington said:

"The requirement of act of March 9th, 1893, par. 2, that a city council shall, within 30 days after an assessment roll is certified to it, by ordinance fix the rate of tax to be levied, is not so mandatory that a slight delay will invalidate the levy."

Wingate v. Kelner, 8 Wash. 94, 35 Pac. 591.

This question is also discussed rather inferentially in,

State ex rel Hamilton v. Hannibal and St. J. R. Co. 113 Miss. 297, 21 S. W. 14.

St. L. & S. F. Ry. Co. v. Gracy, 126 Mis. 472, 29 S. W. 579.

Hallo v. Helmer, 12 Neb. 87, 10 N. W. 568.

In French v. Edwards, 13 Wall 508, it is stated that where statutory directions are designed to secure order, system and despatch in proceedings, and by disregard of which, rights of parties interested can not be injuriously affected, such statutory provisions are directory, but where they are intended for the protection of the citizen, they are mandatory.

The supreme court of Iowa, in considering a similar question, reached the conclusion that:

The statute which required that the board of supervisors should levy the requisition tax at their September session was directory merely, and the fact that the levy was made at the June session was held to be an act of misfeasance not invalidating the tax.

In the same case the Iowa court said:

"No one should be at liberty to plant himself upon the nonfeasance or misfeasance of officers under the revenue law, which in no way concern himself, and make them the excuse for a failure on his part to perform his own duty. Cooley on Taxation 215.

It was the duty of defendant to pay their taxes, and it is no excuse that the officers did not strictly perform their duty, unless, as we have said, defendants were prejudiced thereby."

Easton v. Savery, et al, 44 Iowa, 654, also Hill et al, v. Wolfe et al., 28 Iowa 577.

It is fundamental that if these special school taxes are lawfully levied, it will be the duty of the tax payers within the district to pay them, and that they cannot relieve themselves from this duty merely by asserting that some district or county official has not followed the law, unless the tax payers have, in some manner, been injured thereby.

Section 2598, of the Revised Codes, fixes the date on which taxes for county purposes shall be levied. This time is fixed so that the tax payers of the the county may have notice, and may be present at that time to be heard on any question relating thereto, hence, if the tax in question were a county tax, it is probable that this law would

have to be strictly followed. But it will be noticed from the statute, Section 995, that the special school tax stands on a different footing. There the levy is in effect made by the school board, is certified to the county commissioners, and the commissioners have no option in the matter but "shall cause the same to be levied." If therefor, the tax payers had any right to be heard or to enter or file any protest, it was in the proceedings before the school board and not before the commissioners. It will be noticed, too, that the law does not fix the date on which the school board "shall make such special levy" nor on which date they shall determine on the amount or rate. The time, therefore, that the tax payers could make or enter any protest against the tax, had passed by before the matter reached the county board for consideration, and they could not therefore be injured by the action of the board in causing such special tax to "be placed in a separate column on the tax book which shall be headed 'Special School Tax'."

I am, therefore, of the opinion that if the board of county commissioners should now meet and "cause the same to be levied," and placed in the tax book, that their action will be legal and that the payment of the tax can be enforced. And in view of the fact that this is a matter of great importance to the school districts concerned, I will request that you take the matter up with the county board for such action as may be deemed advisable.

Very truly yours,

ALBERT J. GALEN,
Attorney General.