

Board of County Commissioners, Authority of to Levy Tax. Tax Levy for School District, Levy of. Board of School Trustees, Contracting With Teacher. Teacher, Payment of Damages to.

The county commissioners may levy such tax at a special meeting and place it upon the tax books.

The provisions of Subdiv. 2 of Sec. 508 of Chap. 72, Session Laws 1913, are mandatory, and no writing having been made, as therein required, no enforceable contract was entered into by the act of a board of school trustees notifying a teacher that she had been employed by them for the ensuing year.

August 22nd, 1913.

Hon. J. E. Kelly,
County Attorney,
Boulder, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 15th instant, submitting the following two questions for my opinion:

"1. Can the board of county commissioners make a levy of ten mills for a school district when the clerk of the board of trustees of said district failed to notify the board of county commissioners of the resolution to levy such a tax before the time provided for by law for the levying of taxes by county commissioners?

"2. Can a board of school trustees, having resolved to employ a teacher and having notified her of their action, compromise with her and pay her damages for the failure to employ her, out of the funds of the district?"

The first of these questions has practically been covered by an opinion from this office to C. L. Crum, county attorney at Forsyth, Montana, rendered August 24th, 1911, and found in Volume 4 of the Reports and Official Opinions of the Attorney General at page 245. In the light of this opinion you are advised that the county commissioners may levy the tax mentioned by you at a special meeting and place it upon the tax books.

In answer to your second inquiry I will say that this office passed upon a similar question on May 23rd, 1913, in an opinion to Hon. C. A. Linn, county attorney, White Sulphur Springs, Montana, a copy of which is enclosed herewith. Each case of this kind must be decided largely upon its own facts, and in rendering you this opinion I assume that every step had been properly taken by the board of trustees, and that all of the proceedings were entirely legal. The question then resolves itself into one of whether the provisions of Subdiv. 2 of Sec. 508 of Chap. 76, Session Laws of the Thirteenth Legislative Assembly, in regard to the executing of written contracts in duplicate, is mandatory or directory. As will be noted in the opinion to Mr. Linn, we have held them to be mandatory. This, I think, is generally held to be the effect of such provision, and in this particular case the intent that it should be mandatory is shown by the fact that the contracts are required to be executed not only in writing but in duplicate. Such language brings the statute within the well known principle that the expression of one thing excludes any other. In addition to the authorities cited in the opinion to Mr. Linn, your attention in this matter is called to the case of Globe Furniture Co. v. District 7, found in 51 Mo. Appls. 549. This is a case where the statute prohibited any contract for supplies to be entered into except in writing, with the further provision that such contracts should be in duplicate, and one duplicate to be filed with the clerk. In this case the contract had been reduced to writing, but no duplicate had been made and filed with the clerk. The court held that the failure to execute the duplicate and file it with the

clerk was fatal to a recovery, for the reason that the provision was mandatory and that the board could act in no other way. See also Taylor v. School Town of Petersburg, 72 N. E. 159.

You are, therefore, advised that in the case submitted by you no contract enforceable against the school trustees for the district came into existence, and that, therefore, there is no liability upon the district for the payment of wages, and that in such a case the trustees would not be justified in the expenditure of school funds in the compromise of such a claim.

Yours very truly,

D. M. KELLY,

Attorney General.