

**High Schools, District. District High Schools, Taxation for Support of.**

Where county high schools have been established in any county and a district high school is maintained within such territory, and which has not become fully established as an accredited high school, such district is entitled to a refund of taxes levied and collected therein for high school purposes for the support of county high schools. But when such district high school becomes fully established as an accredited high school, taxes are no longer levied thereon for county high school purposes, hence the source of revenue theretofore available for the support of such district high school is abolished and such district high school must hereafter rely for its support solely upon the general school levy.

September 25th, 1913.

Hon. T. A. Thompson,  
County Attorney,  
Kallispell, Montana.

Dear Sir:

I am in receipt of your letter of the 16th instant, wherein you request the opinion of this office as to the establishment, maintenance and support of district high schools by taxation. The authority is to be found under the provisions of Chap. 76 of the Session Laws of the Thirteenth Legislative Assembly. Under the provisions of paragraph 2 of Sec. 507 of Chap. 5 of said act the board of trustees in any school district may establish a high school, employ a principal teacher and subordinate teachers and grade the school into departments and classes, whenever the interests of the district require it. Sec. 600 of Chap. 6 of the act defines public schools, and the definition includes high school grades. Sec. 603 of Chap. 6 provides that boards of trustees have power to establish a high school as provided in the act. Chap. 20 provides generally for the support of schools. Sec. 2000 of this chapter relates to the permanent school fund. Sec. 2001 relates to the general school levy of four mills on the dollar of the assessed value of all taxable property, real and personal, within any county. Sec. 2002 of this chapter provides for special school taxes, and under this section it is made the duty of the various school boards in the school district to certify to the county commissioners annually the number of mills per dollar which it is necessary to levy on the taxable property of the district, not to exceed ten mills, to raise a special fund to maintain the schools of said district, etc. Provision is also made by other sections of the act for the transfer of road funds, under certain circumstances, and the proceeds of town lots, and the money when so transferred shall be used for the support of the schools.

An examination of the act discloses that aside from bonding school districts, for the purpose of raising revenue, no other provision is

made for school support, save by the provisions of Chapter 21 of the act, which has to do with county high schools. When high schools are created a tax may be levied for their support, under the provisions of Sec. 2108 of the chapter. This tax must not exceed ten mills on the dollar on the taxable property of the county, and when the tax is levied for the payment of teachers' wages, and for contingent expenses only, it must not exceed three mills on the dollar. Sec. 2112 of the chapter refers especially to district high schools. This section reads as follows:

"In any county where a county high school has been established, any district which maintains high school classes, duly accredited by the state board of education, shall be entitled, on such accrediting, to a refund of county high school moneys levied and collected for maintenance, from such district as follows: For maintaining first year of high school work with not less than five census students in average daily attendance, a refund of one-fourth of such money; for maintaining second year of high school work, with not less than ten such students in such daily attendance, a refund of one-half of such money; for maintaining third year of high school work, with not less than fifteen such students in such daily attendance, a refund of three-fourths of such fund; for maintaining fourth year of high school work, with not less than twenty such students in such daily attendance, a refund of all the high school levy. Provided, however, that when such district high school has been fully established as an accredited high school, such district shall thereafter be exempt from further levy by the county high school board, except for bonded indebtedness for free county high school purposes."

By reading this section carefully it becomes apparent that where district high schools are maintained, but have not been fully established as accredited high schools, a refund of the county high school levy is made to the district for the support and maintenance of such district high schools, but when such district high schools become fully established as accredited high schools, the district is no longer taxable for county high school purposes, and no refund is thereafter available from the county high school levy. It follows, therefore, that when a district high school is fully established and accredited, it loses a source of revenue theretofore available for its support, and must then rely solely for support upon the provisions of those sections of Chapter 20, herein referred to.

This conclusion may appear paradoxical, but it is nevertheless true, as a careful reading of the school laws will disclose. Why the legislature should provide specially for the support of district high schools until they have become fully established and accredited, and then cut off of this special source of revenue, is a question upon which we are not permitted to speculate. Suffice it to say that my conclusion is based upon the law as I find it.

Yours very truly,

D. M. KELLY,  
Attorney General.