

Indebtedness Between Counties, Settlement of. Settlement, of Indebtedness, Into What Found Paid. County High School, Fund of.

There is no reference made in Chap. 133, Laws 1913, as to the disposition to be made of funds paid by one county to another.

In case a part of the indebtedness is because of debts contracted or expenditures made on account of a county high school, then the proportionate share of the moneys paid should be credited to the high school fund.

December 5th, 1913.

Hon. R. S. Steiner,
County Attorney,
Big Timber, Montana.

Dear Sir:

I beg to acknowledge receipt of your letter of the 21st instant, together with an opinion rendered by you to the county high school of your county, in answer to a request for an opinion from them upon the following questions:

"In the settlement between Sweet Grass County and Stillwater County there is a balance due Sweet Grass County.

When said balance is paid Sweet Grass County, does any part of it go into the Sweet Grass County high school fund?"

The provisions of Chap. 133 of the Thirteenth Legislative Assembly of Montana are specific enough in regard to the manner in which the indebtedness shall be distributed between the two counties, but you entirely omit any reference as to what disposition shall be made of the funds that are paid by one county to the other. In the absence of such a provision we must turn to general principles of law and equity for a solution of the problem.

A similar question has heretofore been considered by this office in regard to a division of school districts, in which the question submitted by the Hon. D. W. Doyle, county attorney of Teton County, was:

"Into what fund should money be paid that has been received by an old school district from a new school district, under the provisions of Sec. 405, Chap. 76, of the Laws of 1913,"

A copy of which opinion I am enclosing herewith.

It is only a pre-existing indebtedness at the time of the county division which gives rise to any payment by a new county to the old, and the purposes of such payment is that such indebtedness may be paid and collected, so far as the new county is concerned. As a corollary to this proposition, it would seem that moneys paid by the new county to the old on account of this indebtedness should be applied to the indebtedness which occasioned the payment. That you will note is in substance what we held in regard to the payment by a new school district to an old, of their proportionate share of the indebtedness. Under this view the high school fund of Sweet Grass County would not be entitled to any of the moneys paid to Sweet Grass County by Stillwater County upon a settlement of the indebtedness provided for by Chap. 133 of the Session Laws of the Thirteenth Legislative Assembly, unless a part of said indebtedness is due to debts contracted or expenditures made on account of such high school. And in such case the high school fund should be allowed only such

proportion of the moneys so paid, as the debt incurred on account of the high school bears to the whole indebtedness of the county.

While it is true that boards of county commissioners have control of county funds, revenues and property, as pointed out by you in your opinion, they are, nevertheless, subject to the general rules of law and equity in their dealings with the taxpayers' money as ordinary individuals would be, and they cannot disregard the equitable rights and interests of the persons who are ultimately responsible for the payment of county indebtedness.

I have above indicated my opinion as to what distribution should be made of the funds received by Sweet Grass County from Stillwater County, which you will note is based more upon abstract principles than upon specific provisions of the act.

Yours very truly,

D. M. KELLY,
Attorney General.