

County Commissioners, Taxing Power of. School Trustees, Have no power to levy tax. Taxation, void levy, remedy.

School trustees are no part of the taxing power. Where the Board of County Commissioners exceeds its jurisdiction in making a levy for school purposes, the levy is void and payment under protest need not be made, but injunction may be resorted to whenever the taxing power seeks to enforce collection.

November 23, 1914.

Hon. G. J. Jeffries,

County Attorney,
Roundup, Montana.

Dear Sir:

I am in receipt of your recent inquiry, as follows:

"The trustees of School District No. 9, Musselshell county, made a levy of five mills, general, one mill, special. By an error of the clerk, the records which were sent in to the Clerk and Recorder, showed a twelve mill levy, six general, and six special. The records were written up accordingly and the county treasurer is now endeavoring to enforce collection of the twelve mill levy. QUERY: What is the proper action to be taken in the premises?"

Under Section 2108, Session Laws of the 13th Legislative Assembly, the school trustees make an estimate of the amount of funds needed and present to the Board of County Commissioners a certified estimate of the rate of tax required to raise the amount desired for such purpose. School trustees are no part of the taxing power.

Morse vs. Jacky, 34 Mont., 165.

The commissioners whose duty it is to make the levy may not levy in any one year, an amount to exceed ten mills on the dollar on the taxable property in the county. Under the facts stated, the Board of County Commissioners exceeded its jurisdiction in levying an amount in excess of the statutory authority. Such levies are deemed to be absolutely void. (37 Cyc. 974-977).

The weight of authority is to the effect that a void tax need not be paid under protest in order to protect the rights of the taxpayer, but payment may be refused altogether, and the question raised by injunction proceedings, whenever the taxing power seeks to enforce collection.

Revised Codes, Sec. 2741;

Hensley vs. City of Butte, 33 Mont. 206;

Montana Ore Purchasing Co. v. Maher, 32 Mont. 480.

Yours very truly,

D. M. KELLY,
Attorney General.