

**County Free High School, Refund of Taxes. District High School, Refund of Taxes to. Refund of Taxes, to District High School. Taxes, Refund of to High School. School District, Taxes for High School.**

Section 2112, Chapter 76. Laws of 1913, relating to refund of taxes to school districts maintaining a high school, considered and construed.

May 28, 1915.

Hon. J. E. Erickson,  
County Attorney,  
Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of the 22nd instant, relating to the refund which should be made to school districts maintaining a high school in counties where a county free high school is maintained.

Section 2112, Chapter 76, Laws of 1913, confers authority upon school districts to maintain a separate high school, and also provides that such districts are entitled to a refund of the county high school moneys levied when this high school maintained by the district has been duly accredited by the State Board of Education. The rule for determining the amount of the refund is prescribed in the Section 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.”

Two things are required before a district is entitled to this refund: 1. The maintenance of the high school work; 2. The average daily attendance required by the law. Neither of these facts can possibly be determined until the close of the school year. Hence, if the school begins on the first of September of any one year, and closes on the first of June of the following year, the proper accreditation cannot be made until after the first of June. If, then, this accreditation dates forward so as to fix the amount of the refund to which the district will be entitled of the taxes to be levied for the year following, the district would not receive any refund whatsoever for its first year high school work. The statute to my mind clearly refers to a refund of the taxes paid for the year during which the school was taught. For example, if the school commenced on September 1st, 1913, and ended on June 1st, 1914, the district would be entitled to a refund of the high school tax paid in the fall of 1913, in accordance with the accreditation given the school for the time during which the school was taught, to-wit: from September 1st, 1913, to June 1st, 1914. The tax levy for 1914 may vary from that of 1913. Hence, if the accreditation related to the future tax, the district might receive either a greater or a less refund than that to which it would be entitled out of the taxes actually collected for the maintenance of the school during the year it was actually in existence. It is not any argument to say that by the time the school year is ended, the moneys collected and paid the fall previous will have been expended, for the county high school trustees in 1914 would know the exact amount of the refund demanded of them, and could levy their tax accordingly; whereas, in the year 1913, they would not have any knowledge that a refund at all would be demanded, hence, could make no levy covering it. Under this view of the case, the district of which you speak, which maintained a high school during the years 1913, and 1914, are entitled to a rebate of the taxes paid in 1913, in accordance with the accreditation given to the school from the time it commenced in 1913 until the close of the school year in 1914. If that accreditation was for the third year of high school work, then the refund is three-fourths; if it was for the fourth year of high school

work, then the refund is for the total amount.

The statement in your letter is to the effect that the district was accredited with the attendance and maintenance of high school work in the third year during the school year 1913-1914, but on December 12, 1914, the State Board of Education duly accredited the school with the maintenance of the fourth year high school work. I am unable to determine to what years this accreditation of the State Board of Education related. If it related to the school maintained and to be maintained in 1914—1915, it is entirely premature, for the Board could not possibly at that date determine either of the two propositions which must be passed upon by it, that is: maintenance, and daily average attendance. The proper accreditation of the school for the year 1913-1914 must be the guide in determining the refund to which the district is entitled, and that refund should be out of the taxes paid in the fall of 1914. If this law continued in force, the district if it maintained the high school, would be entitled to its refund of the tax paid in 1914, in accordance with the accreditation given to it for the maintenance of school during the years 1914-1915, but this law was by the provisions of Chapter 119 of the Acts of the Fourteenth Legislative Assembly, approved March 8, 1915, repealed by being amended out of existence. However, I take it that the right of the district to the refund, as above indicated, became a fixed right prior to the repeal of this law, and hence, the repeal cannot have relation to it.

It is very difficult in the construction of a statute of this character, containing apparently inconsistent provisions, to give effect to all of its provisions in a manner that is absolutely clear of doubt, and if there is any substantial doubt remaining there as to the rights of this district, or relative to the proper protection to be given to either of the school boards, or to the county treasurer, I would suggest that an action be instituted in the District Court, and a decree of court obtained which would afford ample protection to all parties concerned.

Yours very truly,

D. M. KELLY,

Attorney General.