

Common School Funds—Normal Training Course.

What constitutes common school funds discussed. Restriction under Section 9 of Chapter 114 of 1917 Session Laws.

July 24, 1917.

Miss May Trumper,
State Superintendent of Public Instruction,
Helena, Montana.

Dear Madam:

You have requested my opinion upon the question of whether or not it would require a vote of the electors of the county or of the district, in case any school district should desire to install a normal training course in the 11th and 12th grades of its school; and also if a county high school desires to incorporate this course, it would be necessary to submit the matter to the electors of the county.

Section 1 of Chapter 114 of the 1917 Session Laws is as follows:

"Any accredited High School in the State, approved as hereinafter provided, may establish Normal Training Courses for rural school teachers, or Junior College Courses, or both."

And Section 9 of this same Chapter:

"None of the common school funds shall be used in any county to carry out the purposes of this Act, without first submitting such proposed expenditure to a vote of the qualified electors affected thereby."

It is therefore apparent that by virtue of the authority given the Board of Trustees of a school district under Section 508 (17) of the School Law, "to determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent, in districts of the third class," and given a county high school board of trustees under Section 2104 (7e), any accredited high school in the state, whether district or county, may establish a Normal Training Course in accordance with the provisions of Chapter 114 of the 1917 Session Laws.

The answer, therefore, to the questions submitted depends upon what is meant by the "common school funds."

Section 10 of the Enabling Act provides "that upon the admission of each of said States into the Union, Sections numbered 16 and 36 in every Township * * * are hereby granted to said States for the support of common schools."

By Section 7 of Ordinance No. 1 the State accepted "the several grants of land from the United States to the State of Montana * * * upon the terms and conditions therein provided." And by Article XVII, Section 1 of the Constitution, all lands of the State that have been, or that may hereafter be granted to the State by Congress shall be held in trust. In connection with Article XI of our Constitution, relating to Education, our Supreme Court in *State v. Cave*, 20 Mont. on page 471-2, said:

"Sections 2 to 6, inclusive, of Article 11, of the Constitution of Montana, make provision for the public school fund of the state, and the sources from which that fund shall be derived. Section 3 declares that the fund shall forever remain inviolate. Section 5 provides that the interest on all invested school funds, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the state in proportion to the number of children and youths between the ages of 6 and 21 years residing therein, respectively; and Section 6 imposes upon the Legislative Assembly the duty of providing, by taxation or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free, common school for each organized district in the state for at least three months each year."

Section 2000 of the School Law, relating to the Permanent School Funds of the State provides that the principal of the state school fund shall remain irreducible and permanent, and this Section further provides the several sources from which the said fund shall be derived. Section 2001 provides for the Common School Levy and is as follows:

"In addition to the provisions for the support of common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of four mills on the dollar of the assessed value of all taxable property, real and personal, within the county which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines or violations of law, unless otherwise specified by law. Such money shall be **forthwith** paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxing each county and dividing in the same manner."

It was further said in *State v. Cave, Supra*, on page 473:

"To put in force the constitutional provision contained in Section 5 of Article 11, *supra*, and to provide the instruments for dividing the funds required to be raised by the terms of Section 194Ca, (now Section 2001 of the School Law) the superintendent of public instruction is required by Section 1714 (now Section 202 (12) of the School Law) to apportion the state school fund among the counties of the state in proportion to the number of children of school age in each county; and by Sections 1737 and 1942 (now Sections 302 (9) and 2003 of the School Law) the County Superintendent of Schools is required to apportion all school moneys to the several districts of his county in proportion to the number of school census children at such times as may be deemed necessary for the convenience of the school officers." * * *

And it is these funds just mentioned which constitute the "common school funds" of a school district, the same being apportioned by the county superintendent from the county's share of the state school funds and the amount received by the county under the four mill levy and from fines under Section 2001 above.

Under Section 2002 each school district may direct the county commissioners to levy a special school tax, but this is no part of the common school funds. Also by Section 2108 a levy is made for county high school purposes, of which school districts maintaining high school classes duly accredited may receive a portion under Chapter 119 of the 1915 Session Laws. And by Chapter 105 of the 1917 Session Laws, a special tax levy must be made for the benefit of school districts maintaining accredited high school classes, in counties having no county high school. But none of these funds are a part of the common school funds.

Therefore, Section 9 above does not apply to county high schools and it is not necessary to have an election, as none of the common school funds could be expended by a county high school. The only restriction under Section 9 is that if a district high school desires to maintain a Normal Training Course or a Junior College Course, and cannot maintain such course out of the funds derived from these special levies, it shall not use any of the common school funds, as herein explained, without first submitting such proposed expenditure to a vote of the qualified electors of the school district, who are the "electors affected thereby."

Respectfully,

S. C. FORD,

Attorney General.