

County High School—Tax Levy—Dormitory, Funds For.

An entire county may be taxed for county high school and funds therefrom may be used for the construction of a dormitory.

Sept. 25, 1919.

Miss May Trumper,
State Superintendent of Schools,
Helena, Montana.

Dear Miss Trumper:

You have submitted to me a letter from the School Board of District No. 4 of Jefferson County relative to a levy of three mills for County High School purposes and a levy of two mills for a dormitory building in connection with the County High School. It appears that District No. 4 maintains an accredited high school.

The County High School is a county institution, title to which is vested in the county, and bonds and taxes for which are an obligation of the whole county. Section 2109 provides:

“The Board of County Commissioners may submit to the electors of the county the question of whether county bonds shall be issued for the purpose of erecting or purchasing a building, or the erection and equipment of a dormitory or gymnasium, and a site therefor.”

Section 2111 provides:

"In case bonds are issued, the trustees in making estimates for maintenance of high school, shall not include estimates for buildings or other purposes for which the said bonds are issued."

Section 2108 provides:

"Trustees shall make an estimate of the amount of funds needed for building purposes, teacher's wages and contingent expenses and submit it to the Board of County Commissioners, who must levy such taxes as other taxes are levied. But the tax for such purpose shall not exceed five mills in one year. Construing these provisions together, it is undoubtedly the intention of the legislature to first permit a county high school board to construct a dormitory in connection with a county high school and to pay for the same by (a) a bond issue, or (b) a tax levy."

You ask if the county can be taxed for a County High School. Can your district levy a similar tax? Your question is fully answered by the case of *Hamilton vs. Board of County Commissioners*, 43 Mont. 301. The following is from the syllabi:

"2. Bonds authorized for County High School purposes by Chapter 167, Laws of 1917, are county bonds as defined above, and that therefore the provisions of Section 2009 thereof, making taxable for interest and redemption purposes only property in the county outside the limits of those districts in which a district high school is maintained, is void under Section 11, Article XII of the Constitution, and further, a bond which imposes an obligation upon a district less than the entire county is not a county bond."

I am, therefore, of the opinion that a tax levy covering the entire county for county high school purposes is valid and that the proceeds may be used to construct a dormitory. I am further of the opinion that the district high school cannot levy a tax upon the whole county.

Respectfully,

S. C. FORD,

Attorney General.