

### Schools—Warrants Issued in Anticipation of Taxes.

Where an additional levy has been submitted to and approved by the electors, warrants may be issued in anticipation of taxes to be raised for the purpose of meeting current expenses.

Mr. Henry M. Lancaster,  
Chairman Board of Trustees,  
School District No. 1,  
Saltese, Montana.

Dear Sir:

When you presented the financial difficulties of your district to me orally on March 13th, I did not go into the question of your right to issue further warrants for the reason that, at that time, I was not satisfied of your right to do so, and you seemed to be of the opinion that you could finance the district upon the opinion of this office, that the unauthorized indebtedness of the former School Board, incurred in building an addition to the High School, had been legalized by a vote of the district.

In my letter to you of that date, I expressed the opinion that the unauthorized acts of the former Board in contracting for this addition to the High School had been ratified and made legal by the subsequent vote of the electors. By that I intended to say that while formerly an action could not have been maintained against the district for this indebtedness, that it is now a legal obligation of the district. While in one part of my letter I used the expression that the "warrants issued in payment therefore are legal and binding obligations to the district", this expression was inadvertently used, as by the latter part of my letter I intended to convey the impression that these warrants were merely evidence of the indebtedness which they were used to pay, for while a warrant may be void for want of proof that it was issued in accordance with statutory requirements, yet where the contract was lawful it is competent evidence of the debt.

Board of Education vs. Foley, 90 Ill. Appl. 494.

Under the provision of Subdivision 9 of Section 302, Chapter 76 of the Session Laws of 1913, the County Superintendent is directed to certify to the several District Clerks and County Treasurer, the amounts so apportioned to the several Districts. The Trustees shall draw their warrants on the County Treasurer in favor of persons entitled to receive the same. *Such warrants shall show for what purpose the money is required, and no such warrants shall be drawn unless there is money*

*in the Treasury to the credit of such District*; providing "that School Trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected for the payment of *current expenses* of schools, but such warrants shall not be drawn in any amount over the sum already levied." The Board is, therefore, in any event limited to the issuing of warrants for current expenses where levy has been made.

Inasmuch as it now appears that your cash on hand is insufficient to provide for the running expenses of the school and that you will be compelled to close the schools unless you can issue warrants in anticipation of the collection of the special 15 mills levy voted by the District, it will be necessary to determine whether this special election, held under the provisions of Chapter 93 of the Session Laws of 1917, in itself constitutes a levy, or whether it is made within the provisions of Section 302, only after it has been acted on by the Board of County Commissioners at their meeting held the second Monday in August. The proposition authorized to be submitted under Chapter 93 is: "Shall the Board of Trustees of this District be authorized to make a levy of .....Mills taxes in addition to the regular 10 mill levy authorized by law?" This, substantially, was the proposition at your special election. Chapter 93 further provides; "If the vote is favorable, the Board of Trustees shall so certify to the Board of County Commissioners, and said additional levy shall be made in the same manner that the levy for special taxes in said District is made."

Section 2002 provides for a special school levy in the following manner; "On or before the second Monday in July, the Board of Trustees of each district shall certify to the County Commissioners the amount of money needed to maintain the schools, furnish additional school facilities, appliances and apparatus, and to provide for nine months school in districts of the first and second class. The Board of County Commissioners shall thereupon levy a special tax for such purpose at the same time and in the same manner that other taxes are levied."

The question, therefore, is, was this tax levied by the Board on direction of the tax paying freeholders, or is the levy made by the Board of County Commissioners?

As applied to taxation the word "levy" is given a variety of meanings, among others the following; "to impose or assess"; "to impose, assess and collect under the authority of law"; "to raise or collect by assessment"; "to charge a sum of money already ascertained, against a person of property subject to the charge"; "to determine by vote the amount of tax to be raised"; "to fix the rate at which the property is to be taxed."

25 Cyc. 207, Gray vs. Board of School Inspectors,  
83 N. E., page 98.

"There are two distinct steps in the process of levy; the result of one of which is to fix indebtedness on the collective body of taxpayers, and the other on the individual tax payer. The word is commonly used indifferently to express either one of the purposes, separately, or both collectively."

Southern Ry. Co. vs. Kay, 39 S. E., 785.

The word "levy" as used in constitutional and statutory provisions, that the County Commissioners shall levy a tax in their respective counties for the support of public schools, and that County Boards shall levy an annual tax on property in their respective counties to be collected at the same time, and by the same officers as other taxes, excludes from the act of levying any significance of creation. The duty to levy imposed on the Board, is, therefore, purely ministerial, and only imports that it should take such action as would result in the tax being placed on the Auditor's books. The Boards have no power to do anything more or less than require that the taxes be entered.

Dixon vs. Borikmyer, 46 S. E., 343.

In *State vs. Lakeside Land Company*, 71 Minn. page 290, here the question was "is it essential in order to constitute a valid levy of taxes for general school purposes in independent school districts of Duluth, that the Board of County Commissioners shall levy such tax by resolution or otherwise?" The court in discussing this question said: "According to the general policy of our laws school districts like towns and cities are territorial and not in any other sense parts of the County in which they are situated. They are quasi municipal corporations and for the purpose for which they were created coordinate with and not subordinate to the counties in which they are situated. The counties are created for certain purposes and these other quasi municipalities for entirely different purposes. Each within its own particular sphere manages its own affairs, exempt from the control or supervision of the other, unless otherwise expressly provided by statute. They levy their own taxes and expend them for their own purposes, although for reasons of convenience and economy the County officials are generally used as mere ministerial agents to extend the taxes on the tax lists and collect them. *They all levy their own taxes in the sense of voting them or determining their amount*, but have no machinery of their own for their collection, and are required to certify their action to the County Auditor, whose duty it is to extend them on the tax books as par of the taxes for the current year, and thereafter the County Treasurer collects them to the same as other taxes, and pays them over to the municipality to which they belong.

No reason can be assigned why this system should not supply to school districts or independent school districts, as well as to other quasi municipalities, or why their power to levy taxes for their own purposes should be subjected to the veto or supervision of the County Commissioners. In the case of common school districts the amount of money to be raised by taxes for school purposes is determined by the legal voters of the school district. The word "levy" has different meanings according to the object to which it applies. As applied to taxes it sometimes means to raise or exact by authority of Government, or to determine by vote the amount of tax to be raised. It is in this sense that towns, cities and school districts levy taxes. In other cases it is used with reference to the mere ministerial or executive acts of extending them on the tax books and collecting them. It is clearly in this latter sense that the word is used (in our statutes) when it is

provided that school taxes shall be levied in the same manner and by the same officials as county taxes are levied and collected. It has reference merely to the machinery and agencies by which such taxes shall be extended on the tax books and shall be collected. We, therefore, likewise answer the third question in the negative.

It, therefore, appears to me that when the question of 15 mills additional levy was submitted to the electors of the district and approved by them, the Board of Trustees was then authorized to make the levy, and that the date of this levy is the date after which warrants may be issued in anticipation of taxes to be raised thereby for the purpose of current expenses. Therefore, the Board may issue warrants against the money to be raised for the purpose of meeting running expenses, and for no other purpose.

Respectfully,

S. C. FORD,

Attorney General.