

**Budget Law — Counties — County Commissioners —  
County High Schools—Taxes—School Trustees.**

County high schools are county institutions.

County Commissioners have supervisory control over the budget submitted by the Trustees of the county high schools and may approve, amend, or disapprove them.

County Commissioners are not bound to levy the tax as certified to them by the Trustees of the county high school.

E. A. Peterson, Esq.,  
County Attorney,  
Bozeman, Montana.

My dear Mr. Peterson:

Your letter was received stating that:

“The Trustees of Gallatin county high school have certified to the Board of County Commissioners an estimate of six mills as the rate of tax required to raise the necessary funds for Gallatin county high school for the ensuing year.

“Under the provisions of Chapter 69, Session Laws of 1923, all tax in excess of five mills shall be apportioned to the county high school alone.”

You wish the opinion of this office as to whether the County Commissioners are bound to certify a levy of six mills where this amount has been certified by the Board of Trustees of the county high school, or whether the Board of County Commissioners has supervisory control over the amount which may be levied for county high school purposes, and whether, in the event that a six mill estimate is made and certified by the Board of Trustees, it becomes the duty of the County Commissioners to make such levy without the privilege of cutting the levy as certified to them, if, in their judgment, such a cut should be made.

In an opinion of this office found in Volume 9, Opinions of Attorney General, at page 271, the question presented was whether a county high school may issue warrants for maintenance and other purposes in excess of the amount fixed in its budget. As stated in that opinion, a county high school is a county institution and not a school district. (Panchot v. Leet, 50 Mont. 314; Hamilton v. Board of County Commissioners, 54 Mont. 301.) It is, therefore, one of the institutions of the county required to furnish an estimate of expenditures for the succeeding year, under the provisions of Sections 226 and 227, Revised Codes of 1921.

Section 227 reads as follows:

"Upon the day fixed in the notice, the County Commissioners shall proceed to examine such budgets or application for expenditures as may have been filed with the clerk of said board, and proceed to approve, amend or disapprove the same; and said budgets or estimate of expenditures as shall be finally fixed and determined by the Board of County Commissioners in accordance with provisions of this law, shall be the budgets and estimate of expenditures of the several county officers, institutions and agencies, including the Boards of County Commissioners. The Board of County Commissioners shall in accordance with the provisions of the laws of this state, fix and determine tax levies sufficient to provide and care for and make funds available for all such budgets of all county officers, institutions and agencies."

Under the provisions of this section the Board of County Commissioners may approve, amend or disapprove the budget as submitted to it.

The county high school, being a county institution, is like other county institutions under the supervision of the Board of County Commissioners.

Chapter 69, Session Laws of 1923, amending Section 1275, Revised Codes of 1921, intended to permit a levy of six mills for county high school purposes, but to limit the proceeds of the levy, over five mills, to the exclusive use of the county high school. Nor does the use of the language in this section "and the Board of County Commissioners must levy such tax as other county taxes are levied" indicate that the Board of County Commissioners must levy the amount as determined by the County High School Board, but only that the tax shall be levied, whatever the amount, in the same manner as other taxes are levied. This section, as amended, does not, in my opinion, override or conflict with the provisions of Section 227, but leaves the supervision of the budget with the County Commissioners, and necessarily leaves the amount that is necessary to be levied to be fixed by the Board of County Commissioners provided that it is not fixed at an amount exceeding six mills.

It is, therefore, my opinion that the Board of County Commissioners has the same supervisory control over and right to approve, amend or disapprove the estimated budget submitted by the county high school as it has in the case of other county institutions.

Very truly yours,

L. A. FOOT,  
Attorney General.