

Apportionment of Funds—County High Schools—Superintendent of Schools—Taxation.

Where six mills have been levied as the tax for high school purposes only five mills may be apportioned among the various district high schools.

The County High School Board has no authority to agree to distribute the extra one mill levied as above to the various district high schools of the county.

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

My dear Mr. Peterson:

You have submitted to this office the question whether the various district high school boards and the county high school board can, by agreement, authorize the County Superintendent of Schools to apportion the entire six mills, where a levy of six mills has been made

under the provisions of Section 1275, Revised Codes of 1921, as amended by Chapter 69, Session Laws of 1923, among the various district high schools of the county in the same manner that the five mills are apportioned, where a levy of only five mills is made. This section, as amended, reads in part as follows:

“But in no case shall the tax for such purposes exceed in one year the amount of six mills on the dollar on the taxable property of the county. If said tax exceeds five mills, the proceeds of five mills shall be apportioned as heretofore provided by law, and the balance of said tax shall be apportioned to the county high school alone.”

The purpose of the amendment to Section 1275 adding the one mill which is to be apportioned to the county high school alone was to compensate the county high school for its failure to draw county and state apportionment of the pupils attending it as is done by each district high school. If the county high school did not need the extra one mill levy, then it should not have certified this amount to the Board of County Commissioners. Simply because it has now on hand funds not needed by it, but which were raised for its sole and exclusive benefit, does not warrant a distribution of these funds among other institutions not entitled to share in them, nor does the fact that the various high school boards have agreed to this division add anything to the authority of the county high school board. The county high school board is the only board that has anything to say concerning the distribution of its funds. Hence, no other board can agree with it to have the funds distributed in a manner not authorized by law.

School Boards, like all other officers and boards, can do only those things which they are expressly authorized by law to do or which are necessarily implied from powers expressly given.

It is, therefore, my opinion that the County High School Board has no authority to agree to the distribution of the one mill tax among the various district high schools of the county, where six mills have been levied for high school purposes, and that the County Superintendent of Schools has no authority to make such a distribution of the one mill levy.

Very truly yours,

L. A. FOOT,
Attorney General.