

Taxes—High Schools—County Division—Counties.

Where a county has been divided after the levy of high school taxes and the second installment is collected by the new county the tax belongs to the old county but should be distributed as if no division had been made.

Nick Langshausen, Esq.,

July 8, 1925.

County Attorney,

Winnett, Montana.

My dear Mr. Langshausen:

You have requested my opinion as to what disposition the treasurer of Petroleum county shall make of the six mill levy made for county and district high school purposes, the second installment of which, amounting to \$8,000, has been collected by Petroleum county.

This tax is authorized to be levied on all property within the county for county and district high schools of the county. If the levy exceeds five mills the proceeds of the five mills is apportioned by the county superintendent to the county high school and the several accredited high schools of the county, according to the average daily attendance in accredited high school classes for the school year next preceding. The proceeds of the one mill, where six mills are levied, is for the exclusive benefit of the county high schools. (Secs. 1275 and 1280, R. C. M. 1921.)

Under the statute providing for semi-annual collection of taxes one-half the tax is required to be paid on November 30th and the other half on May 31st of the following year. Petroleum county was fully created February 23rd, 1925. The remainder of the high school tax levy was not delinquent at the date of the creation of Petroleum county for payment was not due until May 31st. It therefore did not come within the pro-

vision of section 4398 which requires taxes due the old county against property situated in the new county to be transcribed in and collected by the new county (Hill County vs. Liberty County, 62 Mont. 15) but is governed by the provisions of section 4304, which reads as follows:

“When a county is divided or a boundary altered, all taxes levied before the division was made or boundary changed must be collected by the officers of and belong to the county in which the territory was situated before the division or change.”

Equitable principles require the distribution of the funds collected for the benefit of the institutions for which levy was made without regard to whether it was collected by the original county or by the county created out of the original county.

It is my understanding that Petroleum county contains but one accredited high school. It would not be entitled to any part of the one mill levy where a six mill levy was made as this is for the exclusive benefit of the county high schools. The money collected is a trust fund levied for a specific purpose and ought to be applied to that purpose without regard to the territorial division of the county.

It is, therefore, my opinion that this \$8,000 should be paid over to Fergus county to be apportioned between the county high school and the various accredited district high schools of Fergus and Petroleum counties as would have been the case had no division of the county occurred.

Very truly yours,
L. A. FOOT,
Attorney General.