

Special Levies—School Districts—Elections—Taxpaying Freeholders—Electors—Budget.

Chapter 146, laws of 1931, being a special act, controls sections 1219 to 1223, R.C.M. 1921, where conflict occurs.

Chapter 146 limits elections for special levies to time prior to July 1st. Budget limits expenditures to available levies and other moneys due by apportionment. Elections under section 1219 et seq. cannot be called after July 1st to supplement levies for budget purposes.

Mr. Denzil R. Young,
County Attorney,
Baker, Montana.

July 8, 1931.

My dear Mr. Young:

I have your letter relative to the provisions of sub-section 7 of chapter 146, laws of 1931, regarding the calling of elections for additional levies in excess of ten mills. You state that at a recent election called under this section in a local school district the additional levy was defeated. You wish to know whether another election may be called to vote on this matter at this time; also as to whether taxpaying freeholders in second class districts include electors who own real estate under contract of deed and pay taxes thereon.

Answering your first question, sub-section 7 above referred to is as follows:

“If, after the board of school trustees of any district has adopted the preliminary budget for such district for the ensuing school year, it appears to such board that the amount which will be received from a district ten (10) mill tax levy and from all other sources during such ensuing school year, for the general fund of

such district, as shown by the county superintendent's estimate of revenues, will not be sufficient to meet and take care of the expenditures proposed to be made during the ensuing school year from such general fund, as contained in such preliminary budget, the board must determine and make an estimate of the amount of such deficiency and the number of mills of additional levy required to be made to meet and take care of such deficiency, and must call an election in the manner prescribed by law for the purpose of obtaining the approval of the qualified electors of the district to the making of such additional levy, and such election must be held before the 1st day of July; provided, however, that if it appears to the board of school trustees of any district at any meeting thereof held prior to the general school election on the first Saturday in April, that a levy in excess of ten (10) mills will be required to maintain the schools in such district during the next ensuing school year, such board of trustees may determine the number of mills so required in excess of ten (10) mills, and may submit the question of such additional levy at the next ensuing general school election."

This section clearly limits the calling of special elections for the purpose of raising an additional levy either to the election held before the 1st day of July or to the election held on the first Saturday of April. Each election relates to a levy for the succeeding school year.

Section 13, paragraph 2 of this chapter is as follows:

"If it shall appear to the budget board that the amount which may be raised for the General Fund of any school district by tax levies within the limits prescribed by law and which the board of county commissioners is authorized to levy, when added to the amount of the county superintendent's estimate of receipts for such district, as set forth in Section III of the preliminary budget, will not be sufficient to pay the full amount of estimated expenditures for all purposes to be paid from the general fund of the district, as set forth in Section I of said preliminary budget, then the budget board must reduce or strike out the amounts proposed to be expended for one (1) or more items, as shown in the preliminary budget, in such manner and to such extent that the total estimated expenditures, as shown in said Section I of the preliminary budget, will not exceed the total amount of such estimated receipts and proceeds of the lawful tax levies which may be made for the general fund of the district; provided, that for the purpose of determining for which particular items contained in the preliminary budget the amounts to be expended are to be reduced or stricken out, the budget board may call in and question the members of the board of trustees and the clerk of such district, and in reducing or striking out such amounts the budget board shall be guided, as far as possible by their wishes; provided, further, that if any contract has been entered into between the board of trustees of any school district and any teacher, principal or other person,

by the terms of which contract such teacher, principal or other person has been employed for the school year for which the preliminary budget has been prepared, or when any teacher or principal, by reason of employment during the last school year, is entitled under the provisions of Section 1075, Revised Codes of Montana, 1921, as amended by Chapter 87, Session Laws of 1927, to retain his position and salary during the school year for which the preliminary budget was prepared, the board of school budget supervisors must not make any change in any item for salaries or wages which will reduce or in any manner affect the salary or wages of such teacher, principal or other person."

Reading these two sections together, apparently the budget act intended not only to fix definitely the amount of money that could be expended by any school district for the ensuing school year, but also intended to limit such expenditures to levies that can lawfully be made within prescribed limits of law and which the board is authorized to levy.

Chapter 146 does not expressly repeal sections 1219, 1220, 1221, 1222 and 1223 but it is a special act dealing with expenditures and levies in school districts and would repeal by implication these sections where they are in direct conflict. Section 1219 purports to authorize the board of trustees, at any time when it deems necessary to raise money by taxation in excess of ten mills, to call an election for that purpose. Section 7 of chapter 146 not only authorizes but directs the board to call such an election when it appears from its budget estimates that an additional levy in excess of ten mills is necessary. However, it fixes definitely the dates within which this election must be called.

The purpose of limiting the election to dates prior to July 1st is so that the budget board will have before it, when it meets to fix the expenditures for the succeeding school year, the total levies that can be made to raise the required amount estimated for budget allowance. The budget is a limitation upon expenditures, and the total levies that can be made, plus revenue apportioned from sources other than tax levies, are a limitation on budget appropriations. An increased levy voted after the budget has been finally fixed could not increase the items of the budget; it could only increase the revenue for purposes not covered by the budget. In this regard it is in direct conflict with section 1219 insofar as the items of section 1 of the budget act are concerned.

It is therefore my opinion that chapter 146 being a special enactment in regard to school expenditures and tax levies is in conflict with section 1219, et seq. and being a later act controls, insofar as expenditures itemized in the budget are concerned.

Answering your second question, it has been held by this office that a person who purchases land on the installment plan, paying installments and at the same time paying taxes on the real estate, is a taxpaying freeholder.

Very truly yours,

L. A. FOOT,

Attorney General.