

### Warrants — Registered Warrants — Levies — Taxes — School Districts.

Registered warrants in excess of taxes levied cannot be paid out of levies for current school year.

Miss Emma Madeen,  
County Attorney,  
Hamilton, Montana.

August 3, 1931.

My dear Miss Madeen:

I have your request for an opinion relative to school district No. 3 of your county.

You state that the levy for next year and moneys from all sources will not be sufficient to pay running expenses for the next year, and that a full special 8 mill levy failed to carry. You further state that the district has no reserve fund to carry on between July 1st and December 1st, as contemplated by subdivision 14 of the budget form. It further appears that the district has about \$9,000 of outstanding registered warrants. You wish to know whether the district can divert the moneys appropriated and levied for a special purpose to pay this outstanding warrant indebtedness with interest.

Section 694, R. C. M., 1921, provides:

“The County Superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, \* \* \* each certify to the several district clerks and county treasurer the amount so apportioned to the several districts, and 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 warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, 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 in excess of the sum already levied.**”

Section 1203, as amended by chapter 145, session laws of 1929, provides:

“The trustees of each school district shall at the same time (on or before the first Monday in July) in addition to the fore-

going, separately certify the amount of money needed to maintain the schools of the district, to furnish additional facilities, appliances and apparatus as may be needed to maintain the schools of the district from July 1st to November 30th of the next succeeding year; providing no part of said additional funds shall be used by the district for any school purpose during the year in which the certification is made, \* \* \* the amount collected for the current year and the amount collected for the succeeding year shall be segregated and carried as separate funds by the county treasurer."

At the same session of the legislature in which this amendment was made to section 1203 the legislature also amended section 1213 by adding thereto subdivision 5, which is as follows:

"To keep in a separate fund the proceeds of any levy made to cover expenses of schools for any part of the succeeding school year, and no warrant shall be drawn out of said funds for the preceding school year either before or after the fund is transferred. At the beginning of the school year for which the fund is raised it shall be transferred to the general fund of the district."

I also call your attention to the provisions of section 1219 et seq. providing for submitting to the voters of the district who are taxpaying freeholders thereof, or in districts of the third class who are taxpayers thereof, a question of authorizing an additional levy in excess of 10 mills for the purpose of maintaining the schools of said district, furnishing additional school facilities or for any purpose necessary for the proper operation and maintenance of the schools.

If these provisions of the statute have any meaning it must be found in a limitation upon the power of school boards to issue warrants in excess of anticipated revenues from levies made. If the taxpaying freeholders or taxpayers refuse to vote a special levy for the purpose of maintaining the schools, then the only thing that the trustees can do, in my opinion, is to limit the school term to such time as the revenues of the district, collected or in process of collection, will pay for.

Section 964 has been a part of our statutory law for many years. When the legislature added to section 1203 the portion in regard to making a levy to cover school expenditures for a part of the succeeding year it was a further legislative determination to require the school districts of the state to be kept upon a cash basis or at least to be limited in their expenditures to the revenues received during one year.

The provision in regard to making the levy to cover a portion of the succeeding year is, in my opinion, mandatory, for it is followed by a direction to the county superintendent of schools to estimate the amount of money needed by the district for such purposes (to maintain the schools for the current and a part of the succeeding year) and advise the county commissioners, on or before the time designated by law for the levy of tax in case the trustees shall fail to certify the amount they are required to certify to the board of county commissioners at the time herein specified.

If any part of the \$9,000 of warrant indebtedness has been issued in excess of taxes levied and of money apportioned to the district by the county superintendent of schools, it is my opinion that these warrants cannot be paid out of revenues received from levies for the current year and that their payment will have to await some special provision for their payment, either by way of the special levy voted by the district or by legislative provision authorizing the warrants to be converted into funding bonds.

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