

High School Tax—Tax—Apportionment.

Where the high school tax is to be apportioned between the county and district high school the apportionment should be based upon the relation existing between the respective amounts required to be levied for each school and not on the total of the budget where deduction has been made for cash on hand.

Mr. Robert E. Purcell,
County Attorney,
Jordan, Montana.

December 23, 1931.

My dear Mr. Purcell:

I have your request for an opinion in regard to a controversy between the Cohagen and county high schools over the proper distribution of the county high school tax. I am not sure that I understand just the amount of the tax that was levied for high school purposes.

It was, of course, proper for the county high school to make a one-half mill levy for building purposes under the provisions of section 86 of chapter 148 of the session laws of 1931. This had nothing to do, of course, with your budget. However, it also appears from your letter that there was a one-half mill levy for tuition and transfer purposes. In my opinion this should have been included in the budgets, not as any particular millage levy but as a total amount necessary to be raised by taxation for transfer purposes. Possibly it would have made no difference in the distribution of the funds to segregate and make a special levy for that pur-

pose. Section 89, however, requires the county superintendent to estimate the amount, and requires the proceeds collected to be placed in a special fund; it also states that in determining the total amount to be raised for high school purposes this budget shall be included therein and shall be in addition to the regular budget for maintenance purposes.

In regard to the contention as to the division or apportionment of the fund, in my opinion, it should be apportioned as contended for by the Cohagen school. While the particular language of the statute is that the proceeds of such special tax shall be apportioned by the county superintendent of schools among the county high school and/or district high school in the following manner, yet each high school shares in the amount collected in the proportion its budget bears to the total high school budget of the county.

It is true, as contended for, the total budget of the county high school was \$15,424.75. From this amount, however, there was deducted \$8,595.82, cash on hand, at the commencement of the school year. It was not necessary to raise this amount by a tax levy. It was only necessary to raise the difference between this amount and the total amount of its budget, which was \$6,738.33. The money in the treasury did not, of course, belong to the high school but belonged to the taxpayers of the county and it was necessary to deduct it in determining the total levy. However, if the apportionment is to be based upon the relation existing between \$15,424.00 and \$8,173.00 the county high school would receive an amount of money in addition to that which it already has in excess of its budget requirements.

In my opinion, the money raised by taxation must be divided in the apportionment that the budget of each district was represented in the levy which would be on the basis of \$6,738.33 for the county high school and \$8,173.69 for the district high school.

Very truly yours,

L. A. FOOT,
Attorney General.