

**Warrants — Registration — Payment — Reserve Fund —
School Trustees—School Districts—Special Elections—Budget
—Tax Levies.**

School warrants issued in anticipation of taxes levied but not collected and within the appropriation made in the budget may be registered if there are not sufficient moneys in the funds on which they are drawn to pay them and they are payable in the order of their registration out of the funds on which they are drawn regardless of whether the money that comes to the funds arises from levies made in subsequent years.

Registered but unpaid warrants should be taken into consideration in determining how much money will be needed for the school district to cover the items of expenditure contained in the budget.

Where the ten mill levy is insufficient to raise sufficient funds to cover the current school expenses and create the reserve fund it is mandatory upon the school board to call a special election for the purpose of submitting the question of an increased levy. Failure of the school board to call the election places the board of county commissioners in the same position as if an election had been called and the proposition to make an additional levy had been defeated.

Where the ten mill levy is insufficient to cover the items of expenditure mentioned in section 1 of the budget and to create the reserve fund the budget board need not give preference to the reserve fund over other items mentioned in said section 1 in scaling down said section 1 to meet the estimated funds to accrue to the general fund.

Mr. Don B. King,
Chairman,
Board of School Budget Supervisors,
Butte, Montana.

July 8, 1932.

My dear Mr. King:

You have requested my opinion whether school warrants which were issued within the ten mill levy and within the budget appropriations and

which were not paid by reason of tax delinquencies or failure of the anticipated revenue may be paid in the order of their registration from the taxes collected in November.

Warrants may be issued in anticipation of taxes levied but not yet collected provided they do not exceed the appropriations made in the budget and the taxes levied. If there are not sufficient funds at the time they are presented for payment with which to pay them they may be registered and thereafter they become payable out of the funds on which they were drawn in the order of their registration. It is immaterial that the moneys may come to the funds by reason of levies made in subsequent years.

Therefore, the warrants which you inquire about should be paid in the order of their registration from any moneys that come into the funds on which they were drawn, regardless of the year in which they are received or of the year in which the levy is made. In fixing the levy for the following year the registered but unpaid warrants must be taken into consideration in determining how much money will be needed for the school district to cover the items of expenditure contained in the budget.

You also inquire if it is mandatory to create the reserve fund provided for in chapter 145 of the laws of 1929 when no special election has been called to increase the millage and the district ten mill levy is insufficient to provide sufficient moneys to create the reserve fund and provide for the current school year and school term of nine months.

I do not find anything in said chapter 145 which gives a preference to the reserve fund over the funds required for the current school year. The board, by said section, is required to fix a tax levy to cover both the current year expenditures and the reserve fund but there is a limitation that it must not exceed ten mills on the dollar.

By the enactment of chapter 146 of the laws of 1931 a budget system for schools was provided and the reserve fund is one of fourteen items provided in section 1 of the budget. This office has held that under section 7 of that act it is mandatory upon the school trustees to call a special election for submitting to the electors the question of making an additional levy when the ten mill levy is not sufficient to cover all of the items mentioned in section 1 of the budget, including the reserve fund. This election the school board failed to call and in so far as the board of county commissioners is concerned it is in the same position as if an election had been called and the proposition to make an additional levy had been defeated. The board is limited to a levy of ten mills.

Section 13 of chapter 146 provides that the budget board has the power to eliminate any item in section 1 of the budget and that if it appears that the amount which may be raised for the general fund by tax levies which the board of county commissioners is authorized to levy, plus moneys to be received from other sources will be insufficient to pay the full amount of the estimated expenditures as set forth in section 1 of the budget, then the budget board must reduce or strike out the amounts proposed to be expended for one or more items, as shown in the preliminary budget, in such manner and to such extent that the total

estimated expenditures as shown in section 1 of the budget will not exceed the estimated amount to accrue to the general fund.

The reserve fund is one of the fourteen items mentioned in section 1 of the budget and there is no preference given to it in the budget law over any of the other items so that the budget board is not required to give that item preference over others in scaling down section 1 of the budget to meet the estimated funds to accrue to the general fund. This item is subject to being reduced or stricken out the same as any of the other fourteen items.

Very truly yours,

L. A. FOOT,
Attorney General.

Teaching Contracts — School Board — School Districts — Budget—Anticipated Receipts.

Maximum amount of budget for all purposes including teaching contracts made by the school board cannot exceed anticipated receipts from maximum levy and all other sources for the current school year.

Mr. D. M. Durfee,
County Attorney,
Philipsburg, Montana.

July 27, 1932.

My dear Mr. Durfee:

I have your request for an opinion in regard to the following matter:

The school board of school district number 1 of your county entered into written contracts with the teachers, fixing their salaries at specified sums for a definite period of time. The aggregate of all salaries under these contracts would amount to about \$13,600.

The school board, as provided by law, presented its budget to the budget board, estimating the sum of \$20,000 for salaries of teachers, expenses of janitors and other school expenses. It is found that the ten mill levy authorized by law under the assessed value of school district number 1 would produce a sum of about \$16,000. The budget was, therefore, disallowed by the budget board which allowed the district the sum of \$16,000 for expenses. The expenses for fuel, janitor, etc. will approximate the sum of \$6,400 and would only leave the sum of \$9,600 to be paid to teachers on salaries.

The question is as follows: If the sum of \$9,600 is expended and paid to teachers, is the board authorized under these conditions to issue warrants to pay for school teachers salaries and in contemplation of raising a larger fund the following year?

In my opinion, the school board has no authority to enter into contracts with teachers or with anyone else, the aggregate amount of which will exceed an amount which is the maximum sum that could be raised by taxation upon the assessable property of the district and estimated receipts from all other sources.