

Opinion No. 288**Schools—School Districts—High Schools
—Counties—Warrants—Budget.**

HELD: 1. Section 1 of Chapter 162, Laws of 1933, clearly evidences the intention of the legislature to permit the issuance of warrants within the provisions of the budget, which in turn must be fixed upon the anticipated income as defined in said Chapter.

2. District high school warrants are obligations of the school district and not of the county and should be taken into consideration in determining the indebtedness of the district, provided, of course, that the warrants are valid.

(Note: See Par. 1, Sec. 1, Chap. 44, Laws of 1933-34.)

July 11, 1933.

You request an opinion from this office on the following questions:

"1. When the levy for the fiscal year commencing July 1st, 1933, and ending June 30th, 1934, is actually made, can the school district issue warrants up to the lawfully anticipated collections of school moneys for that year, as defined by Chapter 162 of the Laws of 1933, to pay current operating expenses for that year?

"2. A large portion of the outstanding warrants are warrants issued for the operation of the district high school. These high school warrants are payable out of a general county levy for high schools of the county of which there are five in all. Are these high school warrants obligations of the district? Should they be taken into consideration in determining the total indebtedness of the district?"

In our opinion Section 1 of Chapter 162 clearly evidences the intention of the legislature to permit the issuance of warrants within the provisions of the budget, which in turn must be fixed upon the anticipated income as defined in said chapter.

In answer to question number 2, it is our opinion that district high school warrants are obligations of the school district and should be taken into consideration in determining the indebted-

ness of the district, provided, of course, that the warrants be valid. A school district is a body corporate and politic. (McNair v. School District No. 1, 87 Mont. 423) the warrants issued are its warrants and the obligation to pay the same is its obligation.

Even though most of the funds each year are derived from a county-wide levy, the county has no obligation to pay outstanding district high school warrants. The governing body of the county, the board of county commissioners, has nothing whatever to do with the establishment of a district high school, the matter is not submitted to the electors of the county and it would be rather unusual to say that power has been placed in the hands of other persons than the county officers or electors to create an agency which had power to create a liability against the county, without the county's governing board or its electors having any voice in the matter.

We do not think the fact that most of the funds are derived from a county-wide levy is controlling. District high schools do receive certain other moneys such as tuition from students from other districts or counties, a portion of moneys received from the federal government as bonuses, royalties and rentals, which revenues are all mingled in the same district high school fund.

(Note: See Sec. 1, Chapter 44, Laws of 1933-34, "* * * outstanding district high school warrants, issued by any district, within its budget limitations, shall be an indebtedness of the county, to be paid out of the moneys of the county derived from the high school tax levied by the County Commissioners * * *".)