

**Opinion No. 296****School—High Schools—School Districts  
—Special Levies—Budget.**

**HELD:** The legal voters of a joint school district who are taxpaying freeholders therein, have the power to authorize a levy to produce amounts in excess of the maximums specified in Sec. 5, Ch. 178, Laws of 1933. Such action is not in conflict with the spirit of the Budget Act.

August 9, 1933.

You state that, during the spring of this year, the trustees of Joint School District No. 2 submitted to the electors a proposition for a special levy of six mills for high school purposes in addition to the amount required to make the \$170.00 per student raised by the county-wide tax, and that at such election the proposition carried. We assume that the election is valid in all other respects and that the only question submitted to us is whether or not the taxpaying electors have the power to vote the additional tax upon themselves.

This power was given to the legal voters of any school district who are taxpaying freeholders therein, by sections 1219 (amended Chapter 120, Laws 1925), 1220, 1221, 1222 and 1223 (amended Chapter 120, Laws 1925), all in the Revised Codes of Montana of 1921, which constitute the general school law relating to the additional taxation for school purposes. These provisions are still effective unless they have been expressly or impliedly repealed. We are unable to find any express repeal.

It has been contended that the provisions of Chapter 178, Laws of 1933,

providing a budget system for high schools, impliedly repeals the general school laws pertaining to voting of additional levies. With this contention we cannot agree. Repeals by implication are not favored. (*Penwell v. Board of County Commissioners*, 23 Mont. 351, 59 Pac. 167; *State ex rel. Hay v. Hindson*, 40 Mont. 353, 106 Pac. 362; *State ex rel. Wynne v. Quinn*, 40 Mont. 472, 107 Pac. 506.) It will not be presumed that a subsequent act of the legislature intended to repeal a former law, unless the repugnancy between the two acts is irreconcilable, or the latter revises the whole subject matter of the former. (*Jobb v. Meagher County*, 20 Mont. 424, 51 Pac. 1034; *State ex rel. Esgar v. District Court*, 56 Mont. 464, 185 Pac. 157.)

Aside from the general rules above stated we find in Chapter 178, Laws of 1933, an express declaration which is conclusive that no implied repeal was intended. In Section 5, and contained within the identical sentence which fixed the limit of \$170.00 per student, is the following proviso: "provided, that nothing herein contained shall be construed as preventing any school district from voting upon itself an additional levy for high school purposes, in accordance with the general school laws pertaining to the voting of additional levies by school districts."

It is contended, because of certain language in other parts of Chapter 178, that to permit the taxpayers to vote on an increased levy violates the spirit of the budget law and defeats its purpose. The legislature itself is most competent to define the limits of the purpose and spirit of the law, and it did so in unmistakable terms in the proviso above quoted. Nor do we see why the budget act cannot be operated effectively with such an additional levy. The additional levy was authorized long prior to the time for making the preliminary budget. The school trustees can (and they do) consider the available revenue in making their preliminary budget and the budget board, as well, certainly must take the additional levy into consideration.

Speaking generally on the spirit and purpose of the budget acts, we have never heard it advanced that they were intended to put a curb upon the taxpayers themselves. They were intended

to put a check upon public officers in the expenditure of moneys authorized under the general laws, and in the collection and expenditure of which the taxpayers have no direct vote.

In our opinion the legal voters of the district, who are taxpaying freeholders therein, have the power to authorize a levy to produce amounts in excess of the maximums specified in Section 5, Chapter 178, Laws of 1933.