

Opinion No. 314

**Schools—High Schools—Additional
Levies—Elections.**

HELD: The general school election laws must be followed in voting additional levies for high school purposes, and any election to vote additional levies after June 30 is not a legal election.

3.

You request our opinion on the following matter: "School District No. 8 is a district of the third class. It has

no high school within the district. The nearest county high school is located at Browning, some forty miles from the location of the grade schools in district No. 8. The School Trustees of District No. 8 have directed the budget commission of Glacier County to levy an additional 10 mills for high school transportation for high school pupils residing in District No. 8 for the year beginning July 1st, 1933, and ending June 30, 1934. For the purpose of authorizing the levy an election was held in District No. 8 on July 24, 1933, at which time the question of the additional levy of 10 mills for high school transportation was voted upon and carried. The School Trustees of that district contend that under Chapter 179 of the 1933 Session Laws it is not necessary to hold an election for this purpose. However, they state that they did hold the election merely as a precautionary measure."

Section 1202, R. C. M. 1921, provides for a regular, annual, common school levy of 6 mills. This section was amended by Chapter 123, Laws of 1929, providing that the levy shall be "not less than six nor more than eight mills." This levy is mandatory.

Section 1203, R. C. M. 1921, provides that "on or before the second Monday in August, the Board of Trustees of each school district shall certify to the county commissioners the amount of money needed by the district schools, over and above the amount apportioned to it by the county superintendent under the provisions of Section 1204 *

* * The board of county commissioners shall thereupon levy a special tax for such purposes, not exceeding ten mills

* * * Section 1203 was amended by Chapter 145, Laws of 1929, and again by Chapter 179, Laws of 1933, and is now the law under which your school trustees contend a levy of ten mills may be made by the county commissioners for high school purposes without an election.

High Schools are a part of our common school system but it is made very clear by the various acts relating to the common schools that the legislature intends that the revenues of the elementary schools shall be kept entirely separate and distinct from the high schools. This office has held that Chap-

ter 179, Laws of 1933, so far as the revenues of the two schools are concerned, does not apply to high schools. (Opinion No. 268, this vol.)

Section 110, Chapter 148, Laws of 1931, provides that the general school laws shall govern the high schools in any case in which provision is not made in the code, but the revenues for high schools are provided for in the specific acts applying to high schools and that being true, we are of the opinion that 1203 as amended was correctly construed in opinion No. 268, supra, and that the incidental reference to high schools in Chapter 179 was inadvertently made. This construction eliminates Chapter 179 from consideration in any attempt to raise revenue for high school purposes. The levy under that chapter may be made without an election but only for elementary school purposes.

Chapter 148, Laws of 1931, (page 347) was enacted to "Establish a Uniform Code of Laws Relative to High Schools." Sub-chapter 5 of that act relates to "Finance and Taxation," (page 378), and was no doubt intended by the legislature to cover this subject in its entirety, but, as a precaution, the act provides (Section 110) that "the general school laws shall apply in any case for which provision is not made in this code," as heretofore recited. Sub-chapter 5 of chapter 148, except Section 95 thereof, which does not deal with the subject of taxation, was repealed by the 1933 Session and Chapter 178, Laws of 1933, was enacted to replace the repealed act.

Chapter 178 was enacted to provide "A Budget System for Making and Controlling Estimates, Expenditures and Tax Levies for District High Schools and County High School Purposes." Chapter 178 must be looked to for any authority exercised by officials relating to the subjects it covers.

There is no statutory authority granted by any other provision of our laws for levying a millage tax for high school purposes. Section 11 of Chapter 178 limits the levy to 7 mills, except where 7 mills will not produce \$125.00 for each high school pupil regularly enrolled and residing in the county, with a further proviso in Section 5 "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."

This proviso, this office has held, authorizes districts to provide, by election, for such high school levies over and above the 7 mills, as the qualified electors of the district may approve. (Opinion No. 296, this vol.)

This brings us to the question of the legality of the election of July 24, 1933 in your District No. 8.

The High School Code, Chapter 148, Laws of 1931, provides for elections for bond issues (Sec. 12), for the abolishment of a county high school (Sections 20-23), for establishment of a junior high school (Sections 48-49) but no specific provision is made in the High School Code for any other elections except that referred to in the proviso in Section 5 of Chapter 178, Laws of 1933, heretofore mentioned, which must be in accordance with the general school laws pertaining to voting additional levies. It necessarily follows that the general school election laws must be followed in voting additional levies for high school purposes, and we are, therefore, of the opinion that Section 7 of Chapter 146, Laws of 1931, controls and that any election to vote additional levies after June 30th would not be a legal election.