

Opinion No. 83**School Funds—High Schools.**

HELD: Funds recovered by a school district in an action brought against the county, belong to the district and not to any department thereof, such as county high schools, subject to disposal by the school board as are other funds of the district.

February 20, 1933.

I have your request for an opinion in regard to the use of funds received from Pondera County by reason of a judgment obtained against the county by School District No. 10, the action being brought to recover delinquent penalty and interest, the case referred to being School District No. 12 v. Pondera County, 89 Mont. 342.

You state that:

“The school board, at the time of budgeting, applied the entire amount due this year from the taxes covered by the judgment, to the elementary schools and did not apportion any of it to the high school of said district. If the taxes had been paid when due the high schools would naturally have received a portion thereof.

"The question now arises, is the high school entitled to a portion of the money recovered under this judgment?"

In the case referred to the court used the following language:

"The general rule is that 'unless otherwise directed, interest, penalties and costs collected on delinquent taxes follow the tax, and go to the state, county or city, according as the one or the other is entitled to the tax itself; and in cases where two or more of these are interested in the tax, such interest and penalties should be apportioned among them in the ratio of their respective shares of the tax. But the legislature may change this rule and dispose otherwise of interest and penalties.' (37 Cyc. 1594.) Under this rule a school district is clearly entitled to its proportionate share of the interest and penalties paid on redemption of property purchased by private citizens, as the legislature has certainly not changed the general rule with respect to such moneys."

For a great number of years there has been levied in the various counties of the state for the benefit of high schools a county high school tax. This tax has been distributed on the basis of attendance in counties having a county high school and on the basis of teaching positions and attendance in counties not having a county high school.

Prior to the adoption of the high school code (Chapter 148, Laws of 1931) any school district maintaining a high school could use any part of the funds received by apportionment or by the levy of a tax upon the district for the support of its high school to supplement the amount received from apportionment of the high school tax. Upon the adoption of chapter 148 the legislature, in effect, declared that high schools should hereafter be supported solely from the county high school tax, except where by a vote of the district, a tax was authorized to be levied upon the district for the support of the high school. (See Sec. 87, Chap. 148).

A high school maintained by a district is not a legal entity; it is merely an institution, the property of the district, and is under the control of the

board of trustees of the district. Prior to the adoption of chapter 148 there was no law authorizing a levy to be made upon the district for purely high school purposes. The high school was merely a part of the school system of the district to be supported out of the general and special levies on the district whenever and to whatever extent the school board should find necessary. The high school, as such, did not acquire any vested right in any part of any tax or in any interest or penalty as it was and is not a legal entity.

If there are at present any outstanding registered warrants issued by the district for high school purposes prior to the enactment of Chapter 148, they can, of course, be paid out of this delinquent interest and penalty awarded to the district in the above cited case. They are an obligation of the district the same as if issued for any other purpose by it. The high school, however, is not entitled to any part of the money as a matter of right as it is not, as before stated, a legal entity and is wholly subject to the judgment and supervision of the board of trustees.

The funds belong to the district and not to any particular department of the district. They are subject to disposal by the school board as are other funds of the district to be used for the support and maintenance of the elementary grades.