

Opinion No. 226.**Taxation — Excessive Levy — Refund.**

HELD: Where the tax levy is excessive and unlawful, the excess may be refunded without action of the court.

January 14, 1938.

Mr. Harold G. Dean
County Attorney
Thompson Falls, Montana

Dear Mr. Dean:

You have submitted the following:

"That when the school budgets and levies were made in this county, School District No. 6 failed to take into consideration the amount of transportation that they would receive from the state and consequently the levy was made to raise the entire amount. Therefore the final levy produced more money than the district budgeted for.

"The Northern Pacific Ry. Co., paid their taxes under protest and threaten to sue unless a refund is made of the amount which is illegal. The school trustees, county superintendent of schools and the county commissioners all admit the error and are desirous of refunding the money by allowing the Railway Company to present a claim and paying the same."

The question presented is whether an admitted excessive levy may be refunded without action of the court.

Section 2269, R. C. M. 1935, provides that when a levy of taxes is deemed unlawful by the party whose property is thus taxed, such party may pay same or such part deemed unlawful, under written protest, and may bring an action within sixty days after payment to recover such tax.

When it is admitted that the tax levy is excessive and unlawful to the extent of the excess, there is nothing for the court to litigate. The taxpayer having performed all the conditions

precedent required by Section 2269, the county commissioners may refund the same. Such excess tax was illegally collected and authority is given to the commissioners under Section 2222, R. C. M. 1935, to order a refund of taxes illegally collected. We can perceive no reason why the taxpayer, in such circumstances, should be forced to submit to the delay and expense of an action when there is nothing to litigate and the truth of the allegations of any complaint which might be filed, would have to be admitted.

It is therefore my opinion that such excess tax, illegally collected, may be refunded by the county commissioners without action being brought in court. See also opinion of the Attorney General, Vol. 16, p. 105. We do not think that Section 2222 is in conflict with Section 2269, in the application that we have given to it.