

No. 479

SCHOOL DISTRICTS—BUDGETS—BOARD OF COUNTY COMMISSIONERS—STATE BOARD OF EQUALIZATION—LEGISLATURE—COUNTIES

Held: Where there has been a mistake in the figures of an approved final budget of a school district, whereby the transportation budget for the ensuing year is considerably less than actually intended, and a levy has been made based on the incorrect figure in the final budget, neither the Board of County Commissioners nor the State Board of Equalization has the authority to change the levy. Relief must come from the legislature alone.

September 10, 1942.

Mr. Oscar Hauge
County Attorney
Hill County
Havre, Montana

Dear Mr. Hauge:

You have inquired what, if anything, may be done to correct a mistake made in an elementary school budget for the ensuing year. You state three amounts in the preliminary budget under Item 9, SECTION 1, relating to "Transportation, Rent, and Board for Children," were each correctly set forth; but, owing to a clerical error in the County Superintendent's office, the amount for the ensuing year was incorrectly set forth in a smaller amount in the final approved budget. The error was not discovered by the Board of School Budget Supervisors. As a result, the transportation budget is considerably less than the amount actually intended. Based on this incorrect figure, however, the levy has already been made, the tax books have been made up, and many of the figures have been extended. You believe that—in view of the case of State ex rel. School District No. 8 v. Lensman, 108 Mont. 118, 88 Pac. (2nd) 63—the mistake not only may but should be corrected, but because of the fact the levy has already been made, the tax books made up and the figures extended, the levy may not now be changed.

Agreeing for the purpose of this opinion that the mistake in the budget may be corrected under the authority of State ex rel. School District No. 8 v. Lensman (supra), the question still remains whether the levy may now be changed and, if not, whether any other relief is available to correct the mistake.

The problem is one of first appearance in this jurisdiction, and thus we are faced with a lack of authority on the subject. Our court has often said of county commissioners, "The power to act without authority does not exist." (State ex rel. Bean v. Lyons, et al., 37 Mont. 354, 364, 96 Pac. 922.) Again—"The fact that the contemplated action may be in the best interest of the county is not an admissible argument." (Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962.)

At first blush it would appear that, in view of State ex rel. School District No. 8 v. Lensman (supra), the levy could now be changed to secure for the school district the revenues to which it is entitled. That case and the present case, however, differ in this respect. In State ex rel., School District No. 8 v. Lensman, the mandatory duty of approving the final budget was not performed and was compelled by a writ of mandate; in the present case, the duty of the Board of School Budget Supervisors has been performed. The final budget was approved.

Section 1019.19, Revised Codes of Montana, 1935, provides for fixing tax levies to produce the amount shown by the final budget:

"The county superintendent of schools, as clerk of the school budget board, shall, when the county commissioners meets on the second Monday in August for the purpose of fixing tax levies, lay before the board the budgets for all school districts in the county, as finally adopted and approved by the school budget board, and the board of county commissioners shall, for each district, fix such numbers of mills of the tax levy for each fund, within the limits prescribed by law, as will produce the amount shown by the final budget to be raised by the tax levy." (Emphasis Mine.)

It is a cardinal rule of construction in Montana that—"all proceedings in the nature of assessing property for purpose of taxation, and in levying and collecting taxes thereon, are "in invitum and must be strictly juris." (State ex rel. Tillman, et al., v. District Court, 101 Mont. 176, 53 Pac. (2nd) 107.) The court in the same case stated, "County commissioners have only such authority with reference to tax matters as the legislature sees fit to give them."

The language of Section 1019.19, Revised Codes of Montana, 1935, is clear and unambiguous. The legislative intention must be gathered from the plain meaning of the words employed. (In re Wilson's estate, 102 Mont. 178, 201, 56 Pac. (2nd) 733.) I find no authority under Section 1019.19, nor any other section for the board of county commissioners to change the levy already made in compliance with the requirements of the statute. Express authority cannot be found. Implied authority cannot be said to exist. "Where the Constitution, statute or ordinance provides for the levying of a tax, specifying the purpose, the purpose specified is both the mode and measure of the power that can be legally exercised by the taxing body, and any attempt to go outside it is and must be held ineffective." (Selby v. Oakdale Irr. Dist. et al., 140 Cal. App. 171, 35 Pac. (2nd) 125.)

A similar reading of Article XII, Section 15 of the Montana Constitution, and the relating statutes prescribing the power and duties of the State Board of Equalization, will show that no authority is given that body to give relief for the mistake by changing the levy.

It is therefore my opinion that, where there has been a mistake in the figures of an approved final budget of a school district, whereby the transportation budget for the ensuing year is considerably less than actually intended, and a levy has been made based on the incorrect figure in the final budget, neither the Board of County Commissioners nor the State Board of Equalization has authority to change the levy. Relief must come from the legislature alone.

Sincerely yours,

R. V. BOTTOMLY
Attorney General