

No. 516

SCHOOL DISTRICTS—APPORTIONMENT OF INDEBTEDNESS BETWEEN NEW AND OLD DISTRICTS—COUNTY COMMISSIONERS' AUTHORITY TO MAKE LEVY FOR SCHOOL FUNDS

Held: County Commissioners not authorized to make levy against property in new district to pay for school bonds, where new district does not receive any property, applicable to district organized on May 22, 1920.

November 27, 1942.

Mr. J. W. Walker
Commissioner
Department of State Lands
and Investments
State Capitol
Helena, Montana

Dear Mr. Walker:

You state that on September 1, 1919, School District No. 2 of Dawson County issued Building Bonds, in the amount of \$3,000; that on May 22, 1920, School District No. 6 was organized out of the territory included within the boundaries of District No. 2; and in connection therewith, you request my opinion as follows:

Whether or not it is within the power of the county commissioners to levy against the property of School District No. 6 to pay the indebtedness incurred by the original district.

You refer to Volume 18, Report and Official Opinions of the Attorney General, 159, dealing with this bond issue, but request a further opinion, in view of the fact that the opinion was based upon the fact that the creation of the new district was effected on May 22, 1930, which was incorrect, as the actual date of division was May 22, 1920.

At the time of the creation of District No. 6, Section 9, Chapter 196, Session Laws of Montana, 1919, (now appearing as Section 1029, Revised Codes of Montana, 1935), provided:

"If, at the time such new district is created, there is any indebtedness against such old school district, then the county superintendent of the county in which such districts are located shall apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property in the new district."

Your request for opinion states District No. 6 did not receive any property on its creation, other than a small sum from the general fund apportioned to it on November 11, 1920. This fact indicates District No. 2 has the benefit of the funds provided by this bond issue. This being so, under the above cited statute no part of this indebtedness could be apportioned to District No. 6. Consequently the board of county commissioners would not be empowered to make a levy against the property in School District No. 6 to pay this indebtedness. The only authority for the commissioners to make such levy appears in what is now Section 1031, Revised Codes of Montana, 1935, providing for a levy to pay warrants issued by the new district to the old district upon an adjustment of indebtedness by the county superintendent.

Sincerely yours,

R. V. BOTTOMLY
Attorney General