

**Opinion No. 199.****Schools and School Districts—High Schools—Budget, high school—Taxation, Levy for high schools.**

Held: 1. A school board may utilize the ten per cent increase of the limitation on a high school budget permitted under the provisions of Section 1, Chapter 191, Laws of 1943, when there is an anticipated increase in amounts required for salaries and other operating and maintenance costs.

2. Free textbooks are to be furnished in high schools, but there may be no special textbook levy as Section 1199, Revised Codes of Montana, 1935, was repealed by the adoption of the High School Budget System, Chapter 188 of the Political Code.

3. (a) Section 1263.5, Revised Codes of Montana, 1935, as amended, and Section 1, Chapter 191, Laws of 1943, limit the amount of a high school budget to be raised by the county-wide tax levy provided by Section 1263.11, Revised Codes of Montana, 1935, as amended, and Section 2, Chapter 191, Laws of 1943.

(b) A high school with a maximum budget limitation of \$126.50 may not budget for a greater amount unless authorized by a vote of the district under Sections 1219 to 1223, Revised Codes of Montana, 1935.

(c) Section 1263.11, Revised Codes of Montana, 1935, as amended, and Section 2, Chapter 191, Laws of 1943, does not authorize a larger budget than that permitted by Section 1263.5, Revised Codes of Montana, 1935, as amended, and Section 1, Chapter 191, Laws of 1943.

April 11, 1944.

Miss Elizabeth Ireland  
Superintendent of Public Instruction  
State Capitol  
Helena, Montana

Dear Miss Ireland:

You have submitted for my opinion the following questions:

1. May a school board declare an emergency because of war conditions and decreased enrollments to utilize the ten percent increase of the maximum of high school budgets as provided by Chapter 191, Laws of 1943?

2. May a special levy of not to exceed \$3.50 per student be made on the basis of the average number of pupils attending high school during the preceding school year for the purpose of providing free textbooks for high school students?

3. In a county with one large high school, with a maximum budget limitation of \$126.50 per pupil, may the county levy \$135.00 per pupil and the high school budget up to \$135.00 per pupil?

In answering your first question it is necessary to consider the provisions of Chapter 191, Laws of 1943. Under the provisions of Section 1, Chapter 191, a ten percent increase in the budget limitation of Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 166, Laws of 1939, and Chapter 64, Laws of 1941. The ten percent increase may be made where there is "an anticipated increase in amounts required for payment of salaries and other maintenance and operating expenses for any school year." This provision is broad in its terms and is not dependent on an increased enrollment before the increase is permissible. In fact a decreased enrollment would justify raising the budget limitation in accordance with the provisions of Chapter 191, if an increase in operating expense would result.

Your second question requires an examination of Sections 1198 and 1199, Revised Codes of Montana, 1935. Section 1198 provides in part as follows:

"In all school districts of the state, and in all high schools, free textbooks shall be furnished for the use of the pupils thereof . . ."

It is to be noted the above section provides that free textbooks shall be furnished in high schools.

Section 1199, Revised Codes of Montana, 1935, which was enacted in 1913 and last amended in 1925, provides for a special levy to purchase textbooks, if the general fund of a school district is insufficient for that purpose. However, the High School Budget System was adopted in 1933 and Section 1263.2 of the budget system specifies text-

books as one of the items to be included in a high school budget.

Section 1263.5, Revised Codes of Montana, 1935, as amended, and Section 1263.14, prohibit expenditures over the amount provided in the budget. The levy to supply the funds for the budget is authorized by Section 1263.11, as amended.

The budget act having been enacted at a later date than Section 1199, Revised Codes of Montana, 1935, impliedly repealed Section 1199. There can be no special levy for textbooks as textbooks are included within the regular budget and funds are supplied for the budget by the county-wide high school levy.

In answering your third question, it is necessary to consider the statutes applying to high school budgets and tax levies for the support of high schools.

Section 1263.5, Revised Codes of Montana, 1935, as amended by Chapter 166, Laws of 1939, and Chapter 64, Laws of 1941, contains the limitations of high school budgets. Section 1263.5, as amended, provides that the budget "for a school enrolling more than five hundred sixty (560) pupils the maximum shall not exceed one hundred fifteen dollars (\$115.00)." However, under the provisions of Section 1, Chapter 119, Laws of 1943, this may be increased by ten percent which will make the maximum budget \$126.50.

Section 1263.11, Revised Codes of Montana, 1935, as amended by Chapter 131, Laws of 1941, relates to the rate of the county-wide high school levy and the amount which may be raised by such levy. This section limits the levy to seven mills unless a seven-mill levy will not produce \$125.00 per pupil; then the levy may be increased to produce the \$125.00 per pupil, but \$125.00 per pupil is the limit that may be produced by this special levy. However, under the provisions of Section 2, Chapter 191, Laws of 1943, for the school years beginning July 1, 1943, and ending June 30, 1944, and beginning July 1, 1944, and ending June 30, 1945, the seven-mill levy may be increased so that \$135.00 per county pupil will be produced.

There is no conflict between Sections 1263.5, as amended, and 1263.11, as amended. The former provides the limitation on the high school budget

and the latter provides the limitation on the county-wide high school levy.

It is to be noted that Section 1263.5, as amended, provides for an increase in a high school budget above the previously mentioned limitations as the section contains the following:

" . . . provided further, 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."

The authority and procedure for voting an extra levy are found in Sections 1219 to 1223, Revised Codes of Montana, 1935.

The high school, presented in your question, must budget for an amount not to exceed \$126.50 to be raised by a county-wide levy as provided in Section 1263.5, as amended, and Chapter 191, Laws of 1943. The high school may budget for an amount in excess of \$126.50, provided a special district levy is authorized by vote in accordance with the provisions of Sections 1219 to 1223. This special levy is permitted under an exception to Section 1263.5, as amended, previously noted and quoted. The high school under consideration may not provide for a budget of \$135.00 per pupil as this would be in excess of the limit permitted under Section 1263.5, as amended and Section 1, Chapter 191, Laws of 1943.

The \$135.00 limitation for a county-wide levy provided in Section 2, Chapter 191, Laws of 1943, will apply to those high schools which have a small enrollment with a high per capita cost and which, under the provisions of Section 1263.5, as amended, would be permitted to budget at a rate of \$135.00 or higher for each student. A high school with a large enrollment is limited in its budget per student to a lower figure than \$135.00, and this in turn will result in a smaller amount than may be raised by the county-wide levy provided in Section 1263.11, as amended, and Section 2, Chapter 191, Laws of 1943.

It is therefore my opinion:

1. A school board may utilize the ten percent increase of the limitation on a high school budget permitted under the provisions of Section 1,

Chapter 191, Laws of 1943, when there is an anticipated increase in amounts required for salaries and other operating and maintenance costs.

2. Free textbooks are to be furnished in high schools but there may be no special textbook levy as Section 1199, Revised Codes of Montana, 1935, was repealed by the adoption of the High School Budget System, Chapter 118 of the Political Code.

3. (a) That Section 1263.5, as amended, and Section 1, Chapter 191, Laws of 1943, limit the amount of a high school budget to be raised by the county-wide tax levy provided by Section 1263.11, as amended, and Section 2, Chapter 191, Laws of 1943.

(b) That a high school with a maximum budget limitation of \$126.50 may not budget for a greater amount unless authorized by a vote of the district under Sections 1219 to 1223.

(c) That Section 1263.11, as amended, and Section 2, Chapter 191, Laws of 1943, do not authorize a larger budget than that permitted by Section 1263.5, as amended, and Section 1, Chapter 191, Laws of 1943.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General