

Opinion No. 157.

Schools and School Districts—Common School District—High School District—Indebtedness, School District.

Held: A common school district's proportionate share of a high school building district's indebtedness must be included in the computation of the limit of indebtedness of the common school district.

May 16, 1946.

Mr. D. W. Doyle
County Attorney
Pondera County
Conrad, Montana

Dear Mr. Doyle:

You have requested my opinion whether a common school district which is included in a high school district created under Sections 1301.1 to 1301.6, Revised Codes of Montana, 1935, will be limited in incurring indebtedness by its proportionate share of the indebtedness of the high school district.

Section 6 of Article XIII of the Montana Constitution, and Section 1224.2, Revised Codes of Montana, 1935, limit the indebtedness of a school district to three per cent of the value of the taxable property therein. However, it is arguable that the indebtedness of the high school district is not that of the component common school districts in that they are separate legal entities. However, in *Pierson v. Hendrickson*, 98 Mont. 244, 38 Pac. (2d) 991, our court recognized that common school districts were consolidated for a limited purpose and then considered the precise problem presented by your question without deciding the point. The court said:

"It is next contended that Chapter 47 is in conflict with section 6, Article XIII, of the Constitution, which limits the indebtedness of a school district to three per cent of the value of the taxable property therein, because of the possibility of including in the new district a common school district already indebted to such an extent that its proportion of the proposed bond issue, added to its existing indebtedness, would exceed the constitutional limit.

"The record discloses without controversy that, if the indebtedness proposed by the bond issue involved here were divided between the various common school districts composing the new district in proportion to the assessed value of the property in such districts and added to the existing indebtedness of each of such common districts respectively, the indebtedness of each would still be less than three per cent of the assessed value of its taxable property. Assuming, without deciding, that, in determining whether any common school district had exceeded its constitutional limit of indebtedness, the indebtedness of the proposed bond issue must be allocated in the manner above stated, it follows that plaintiff and no other individual taxpayer of any of the common school districts here involved and none of the common school districts themselves can raise the question here attempted to be raised, for, as to them, the Act is not open to this objection. Only those adversely affected by an unconstitutional Act can question its validity . . ."

Sincerely yours,
R. V. BOTTOMLY,
Attorney General

The reason for Section 6 of Article XIII of our Constitution was expressed in *Butler v. Andrus*, 35 Mont. 575, 90 Pac. 785, where the court said:

"Experience has demonstrated that those who control municipal governments are not always honest, discreet, and conservative citizens, and that, when there is no restraint upon their power to contract indebtedness, extravagant courses frequently result in imposing intolerable burdens of taxation upon the people of their municipalities."

The purpose of the section of the Constitution is to limit the burden of taxation, and to permit the high school district bonded indebtedness to be excluded from the computation of the indebtedness of the common school districts would violate the spirit of the constitutional prohibition.

It is therefore my opinion that a common school district's proportionate share of a high school building district's indebtedness must be included in the computation of the limit of indebtedness of the common school district.