

Opinion No. 124

**County High School—District High
School—Levy—Funds, Appor-
tionment of**

Held: Funds realized from the extra levy authorized by Section 2, Chapter 274, Laws of 1947, are for the sole use of the county high school and shall not be apportioned in part to any district high school within the county.

June 30, 1948

Mr. Robert F. Swanberg
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Swanberg:

You have requested my opinion as to whether the funds realized under Section 2, Chapter 274, Laws of 1947, for the operation and maintenance of a county high school shall be apportioned in part to high schools within the county.

The portion of Chapter 274, Laws of 1947, which authorizes an extra levy for county high schools reads as follows:

"If it shall appear to the satisfaction of the Board of Trustees of any county high school that it is necessary or proper to raise money by taxation in excess of the amount allowed by law, for the purpose of maintaining such county high school . . . said Board of Trustees of such county high school shall determine and fix the amount necessary . . . and shall submit the question of an additional levy . . . to the qualified electors residing in the county where such county high school is situated, in case of a county high without a building district, or to the qualified electors residing within such county high school building district. . . ."

The above quoted portion of Chapter 274 authorizes the additional levy for county high schools and does not mention district high schools as an extra levy for such high schools is authorized by Section 1263.5, Revised Codes of Montana, 1935, as amended. The obvious purpose of the legislature in enacting Section 2 of Chapter 274 was to provide additional funds for the operation of "county high schools," as distinguished from "district high schools;" prior to such enactment, there was no method of supplying additional money for "county high schools." There is no requirement that the funds realized for county high school purposes shall be apportioned to district high schools within such county.

In your letter you asked if Section 1263.11, Revised Codes of Montana, 1935, as amended by Chapter 131, Laws of 1941, would apply in the distribution of the money. Section 1263.11 as amended, provides for a county wide high school levy and prescribes the apportionment of the money to the various high schools in the county. There is no specific requirement in Chapter 274 that the funds realized from the extra levy shall be apportioned to the high schools within the county and to distribute the money in accordance with Section 1263.11 would result in reading into the statute something that is not there. Also, the purpose of Section 2 of Chapter 274 is to supply additional money for operation of county high schools and not for district high schools. The latter may have additional funds as provided in Section 1263. 11, as amended.

Another reason for limiting the use of the funds realized under Section 2 of Chapter 274 to county high schools is that this section states that the trustees of such county high school fix the amount necessary for the maintenance and operation of their school and the additional levy is based on such an amount. To apportion a part of the money to district high schools would result in a deficiency for the county high school. Also, it would not be within the powers of the trustees of the county high school to determine and fix the amount of additional funds for district high schools as they would not come within the

jurisdiction of the trustees of the county high school.

It is, therefore, my opinion that funds realized from the extra levy authorized by Section 2, Chapter 274, Laws of 1947, are for the sole use of the county high school and shall not be apportioned in part to any district high school within the county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General