

Opinion No. 25

**Election, Special Levy—Levy, Extra—
County High School Building District.**

Held: That the extra levy authorized by Chapter 274, Laws of 1947, for County High Schools may be submitted to the qualified electors of a high school building district under the provisions of Chapter 114 of the Political Code of the Revised Codes of Montana, 1935. That the election submitting the question of an extra levy for county high schools in counties not divided into high school building districts must be held in conformity with the general election laws.

April 9, 1947

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

Dear Mr. Swanberg:

You have requested my opinion as to the procedure to be followed in submitting the question of a special levy for a county high school.

Chapter 274, Laws of 1947, authorizes a special levy for county high schools. The Act contemplates that the question shall be submitted to the qualified electors of a high school building district, when the county has been divided into high school building districts, Section 2 of Chapter 274, states that the question of the special levy shall be submitted in high school building district at the regular election held in such high school building district, or a special election called for that purpose." There is no

regular election held in high school building districts as they were created for construction purposes only, Section 1301.5 Revised Codes of Montana, 1935, and Chapter 275, Laws of 1947. However, the Act does provide for the calling of a special election by the board of trustees of said district. Sections 1219 to 1223, Revised Codes of Montana, 1935, provide a method and procedure for holding an election and submitting the question of a special levy to the qualified electors of a school district and such procedure would be adaptable to the election held in a high school building district.

The method of holding a special election in counties not divided into high school building districts offers a more difficult problem.

Section 2 of Chapter 274, Laws of 1947, provides in part:

" . . . Where a County High School has no building district, then such special levy may be submitted and voted upon on the date of the regular county school election, or at a special election called for that purpose by the board of county commissioners of such county, when the board of county trustees of such county high school shall, by resolution in their minutes, state that such extra taxation levy is necessary for any of the purposes hereinabove mentioned."

There is no regular county school election as trustees of county high schools are appointed to their offices by the board of county commissioners with the exception of the county superintendent who is ex-officio a member. Section 1262.4, Revised Codes of Montana, 1935.

The only solution is to call a special election. Sections 1219-1223, supra, are not applicable as such sections by their terms are operative in school districts. It must have been the intent of the legislature to utilize the general election laws in the procedure for such an election.

There is not designated by the codes any specific notice for such a special election, except that Section 538, Revised Codes of Montana, 1935, requires that all questions submitted to the people of the county must be adver-

tised for two weeks before the election.

In the absence of a more specific statute for such a special election, registration must be closed in accordance with the provisions of Section 566, Revised Codes of Montana, 1935, and the list of registered electors printed and posted as provided in Section 567, Revised Codes of Montana, 1935, as amended by Chapter 167, Laws of 1945.

The county clerk, by virtue of Section 686, Revised Codes of Montana, 1935, is authorized to prepare the necessary ballots whenever any question is submitted to the voters of a county. The ballot might well conform with the form found in Section 1222, Revised Codes of Montana, 1935.

As this is an election to vote upon the creation of a levy the eligible voters must be taxpayers whose names appear upon the last preceding complete assessment roll. Section 2, Article IX, Montana Constitution, and Section 544, Revised Codes of Montana, 1935.

It would seem that Chapter 114 of the Political Code of the Revised Codes of 1935, which defines the procedure for an election to authorize a special levy in school district would be pertinent. This Chapter, however, is limited to school districts. In *Panchot v. Leet*, 50 Mont. 315, 146 Pac. 927, our Court held that a county high school is county property and obligations incurred in behalf of the county high school are county obligations. It therefore follows that a levy for county high school purposes in a county not divided into high school building districts must be a county levy and in the absence of any prescribed procedure the election held in conformity with the general election laws pertaining to county wide elections.

However, the hours the polls shall be open are specifically fixed by Chapter 2, Laws of 1937, and this Chapter must be followed.

In proceeding in this matter the Board of County Commissioners should keep in mind the dates of the preliminary and final budgets for high schools.

The levy provided by said election is only for the fiscal year following said election as the need for the funds must be determined in anticipation of the current budget.

It is apparent that the procedure suggested above is cumbersome, but the legislature did not see fit to fix a more satisfactory procedure.

It is therefore my opinion that the extra levy authorized by Chapter 274, Laws of 1947, for the county high schools may be submitted to the qualified electors of a high school building district under the provisions of Chapter 114 of the Political Code of the Revised Codes of Montana, 1935.

It is also my opinion that the election submitting the question of an extra levy for county high schools in counties not divided into high school building districts must be held in conformity with the general election laws.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General