

**Opinion No. 31****School District Bonds—Taxation—Board of County Commissioners  
Authority to Levy.**

**Held: Board of County Commissioners has no authority to levy a tax for the interest and sinking fund of a School District in excess of the amount necessary to meet the interest and principal due for current year.**

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July 9th, 1949.

Mr. Leo H. Murphy  
County Attorney  
Choteau, Montana

Dear Mr. Murphy:

You have requested my opinion concerning the authority of the Board of County Commissioners to levy a tax for the purpose of paying interest and principal on School District Bonds in excess of the amount due for the current year. You advised me that the trustees of the School District have requested a levy in an amount sufficient to retire the bonds prior to their maturity dates.

Section 1224.25 R.C.M., 1935, provides for the preparation of a statement by the trustees of a School District certified to the Board of County Commissioners reciting "the amount of money necessary to be raised by taxation for the ensuing year to pay the interest and retire part or all the principal of each series of its outstanding bonds according to the terms and conditions of such series of bonds and the redemption plans of such Board of Trustees." While this provision of the statute would suggest that the trustees of a district and the Board of County Commissioners could provide for a levy sufficient to retire bonds prior to their maturity, yet such an interpretation is contrary to the general rules of public finance.

In *Rogge v. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, our court considered a problem similar to the one here presented and quoted from a text with approval as follows:

"A tax for a sinking fund in excess of the amount needed for such purpose in any one year is invalid as to the excess."

The court also held there was no implied authority for a County to raise funds with which to buy the County bonds before they mature and in considering the matter the court stated:

"Such a holding would in effect change the obligation of the taxpayers who assumed the bonded indebtedness on the understanding that they would not be called upon to meet the obligation until they matured according to their terms."

It is a good policy to retire and pay outstanding obligations as soon as possible and this is true of individuals and private corporations, but public corporations are bound by law and it is the policy in Montana to levy taxes in an amount sufficient for the current year and to meet current obligations.

It is, therefore, my opinion that the Board of County Commissioners of a County does not have the authority to levy a tax for the interest and sinking fund of a school district in excess of the amount necessary to meet the interest and principal due for the current year.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.