

Opinion No. 34

Schools—County High Schools—Levy For Maintenance and Operation.
Held: 1. County High Schools come under the provisions of Section 3 of Chapter 130, Laws of 1949, providing for special tax levies for high school purposes.

July 8th, 1949.

Mr. Robert F. Swanberg
County Attorney
Missoula, Montana

Dear Mr. Swanberg:

You have requested my opinion concerning the manner of holding an election for an extra levy for the maintenance and operation of a County high school.

In considering your problem it is important to note the statutory background for such a levy. Prior to 1947 no provision was made by the Legislature for an extra levy for County high schools, although trustees of district high schools could under Section 1263.5, Revised

Codes of Montana, 1935, as amended, call an election in the district for such an extra levy. However, in 1947, the Legislature enacted Chapter 274, Laws of 1947, which authorized a special election for an extra levy for County high schools for the following two school years. Chapter 274, by the specific language contained in Section 4 of the act would not apply to budgets for school years subsequent to June 30, 1949. The result is that an extra levy for the maintenance of county high schools must be found in subsequent legislation if there is to be such a tax. Section 3, Chapter 130, Laws of 1949, reads as follows:

"Whenever the Board of Trustees of the local school district within which the high school is situated shall deem it necessary to raise money for high school purposes in addition to its revenues from County and State apportionments, a meeting of the Board of Trustees of the high school district together with the chairmen of the Boards of Trustees of all common school districts included within the high school district shall be called and held to consider the calling of an election to vote upon the question of approving a special levy for high school purposes. Provided, that any other member designated by the Board of Trustees of any such common school district may represent such district in place of the chairman thereof. If a majority of the Board of Trustees of the high school district and the designated representatives of said common school districts attending such meeting shall determine that the proposed expenditures are necessary for the proper maintenance and operation of such high school, said trustees of the high school district shall ascertain and determine the number of mills required to be raised by special levy, and shall call an election for the purpose of submitting the question of making such additional levy to the qualified electors who are taxpayers upon property within the high school district, and, if approved by a majority vote of all the taxpayers voting at such election, the result of said election shall be certified to the Board of County Commissioners, and the levy approved by such majority vote shall be made upon all property within said high school district."

The first sentence of the above quoted, seemingly limits the extra levy to district high schools situated in high school building districts, but such a limited interpretation would preclude County High Schools and it was such County high schools the Legislature had in mind in enacting Chapter 274, Laws of 1947, as district high schools have always had available an extra levy as authorized by Section 1263.5, Revised Codes of Montana, 1935, as amended. To construe Section 3 of Chapter 130, Laws of 1949, as limited to district high schools located in high school building districts would constitute a complete reversal of Legislative intent as previously evidenced by the enactment of Chapter 274, Laws of 1947. It is in reality the County high schools which have needed appropriate legislation for calling an election to authorize an extra levy, and it is reasonable to hold that the authority is to be found in Chapter 130, Laws of 1949. The latter portion of Section 3, Chapter 130, which states, "If a majority of the Board of Trustees of the

high school district and the designated representatives of said common school districts . . . shall determine that the proposed expenditures are necessary . . . said trustees of the high school district shall ascertain the number of mills required . . . and shall call an election . . ." is broad enough in the language used to cover County high schools as well as district high schools.

A rule of construction that is helpful in arriving in the meaning of Section 3, Chapter 130 is found in the case of: *In re Wilson's Estate*, 102 Mont. 178, 56 Pac. (2d) 733:

"The intention of the lawmaker is to be deduced from a view of every material part of the statute."

Application of this rule to the statute under consideration must logically lead to the conclusion that trustees of a high school, whether it be a County or a District high school located within a high school building district shall have the right to call a special election in the manner provided by law for an extra levy for support and maintenance of the high school.

It is, therefore, my opinion that an election may be called for the purpose of submitting the question of an extra levy for the support and maintenance of a County high school located within a high school building district under the provisions of Section 3, Chapter 130, Laws of 1949.

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