Opinion No. 29

Schools and School Districts—High School District Levies—County Wide School Levies

Held: Levies on high school districts and the county wide levies for the maintenance of high schools are valid and legal levies.

July 30, 1951.

Mr. Norman R. Barncord
County Attorney
Wheatland County
Harlowton, Montana

Dear Mr. Barncord:

You have requested my opinion concerning the levy on high school building districts and the county wide levy for the maintenance and operation of high schools. Your questions are asked because of the recent opinion of our Supreme Court in the case of Rankin vs. Love, et al., 5 State Reporter 316, 232 Pac. (2d) 998, which was decided June 14th, 1951.

The facts which were the basis for the litigation in Rankin vs. Love arose from an attempt of a high school district to issue bonds. The boundaries of the high school district and the elementary district were identical and the court directed its attention primarily to the limitation of indebtedness for school purposes and stated:

> "Contravening section 6 of Article XIII as it does, Chapter 275, Laws of 1947 (R. C. M. 1947, 75-4601 75-4606), is unconstitutional and is invalid."

This quoted portion of the opinion illustrates that the court's concern was with the problem of school indebtedness and this is more apparent in that the decision expressly overruled House vs. School District No. 4 of Park County, 120 Mont. 319, 184 Pac. (2d) 285, which held that a common school district could incur indebtedness up to the constitutional limit without regard to the indebtedness of the high school district in which it was located. Our court by such action precluded one piece of property with being burdened up to the limit of indebtedness of the elementary district and then up to the same limit by the overlapping high school district.

In the case of Rankin vs. Love the history of school districts and in particular the legislation relating to high schools was reviewed and the court said:

> "In accordance therewith, a high school, when established, becomes an integral part of the public school system in that particular district. It is under the jurisdiction of the same board of trustees as the elementary grades or any other department of the public school system existing in that particular "school district," and financed and maintained by taxation on the property lying and being within the exterior boundaries of that particular school district. This was the law of this state prior to and at the time of the writing of our Constitution in regard to public schools and "school districts," and it is still the law of this jurisdiction."

In making this statement the case of Pierson vs. Hendricksen, 98 Mont. 244, 38 Pac. (2d) 991, which approved high school districts, was not limited or reversed, although it was before the Court. The Pierson case considered the first high school district law which is almost identical with the present laws, and said:

> "The state legislature may create or abolish districts, or change or rearrange boundaries at will. (State ex rel. Redman vs. Meyers, 65 Mont. 124, 210 Pac. 1064.) It has by Chapter 47 done so with the view of eliminating some of the inequalities pointed out in the Henderson case, and with the view of having the bonds paid by those who obtain the most use of the property benefited by the improvement. We see no constitutional objection to the plan as provided in Chapter 47."

While it is true that high school building districts were created for the

purpose of issuing bonds for construction, repair, improvement and equipment of school buildings, Section 75-4605, Revised Codes of Montana, 1947, yet the legislature had the constitutional authority to utilize the high school districts for maintenance and operation as was done in Chapter 199, Laws of 1949. Section 1 of Article XI of the Montana Constitution directs the Legislature to provide a school system by the provision:

"It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

This constitutional provision was considered in Evers vs. Hudson, 36 Mont. 135, 92 Pac. 462, wherein the court approved a legislative act that authorized the establishment of county high schools. The court's observations concerning this section of the constitution are pertinent:

"The evident purpose of Section 1, Article XI, above, was to insure a system of common schools; but there is not anything in that section, or elsewhere in the Constitution, which directly limits, or by implication may be said to limit, the power of the legislature to provide for other schools. As to whether there is any limitation, beyond which the law-making power may not go in matters of this character, need not now be considered. It was said in Koester vs. Board of County Commissioners, 44 Kan. 141, 24 Pac. 65: 'The concern of the Constitution makers does not seem to have been to provide against the danger of too many schools, but to secure a common school system principally, and also other schools of a higher grade.'

"Section 1, Article XI, is not a limitation upon the legislative power, but is a solemn mandate to the legislature. That the chief concern of the framers of the Constitution was directed to free common schools is evidenced by the facts that such schools are made sole beneficiaries of the public school funds. **But the declared concern of the Constitution framers for a system of public free common schools does not in any sense militate against the power of the legislature to establish other schools.** "The matter of education is one of public interest, which concerns all the people of the state, and is therefore subject to the control of the legislature." (Emphasis supplied)

Thus, approval was granted by our court to an act which authorized the establishment of county high schools. County high schools have never been a part of any school district and their bonds are those of the county in which they are located. The language used in State ex rel. Henderson vs. Dawson County, 87 Mont. 122, 286 Pac. 125, is of specific application as the court said:

"However, a high school education is a necessary intermediate step between the ordinary grade schools and the university courses provided for, and the term "common" as applied to our schools "bears the broadest and most comprehensive signification, it being equivalent to public, universal, open to all." It is used in contradistinction to private and denominational schools, colleges and the like, but has no reference to the grade of school or what may be taught therein, nor the method of rule or government thereof. *** **Thus, under constitutional authority, the legislature may either leave the matter of high school education to the several school districts of a county or provide a different method of rule or government for this class of "common schools."** For years the first method was followed; such high school education as was afforded was given in district school courses or high schools established in districts, without legislative sanction.

"In 1899 the legislature provided for the establishment of free county high schools by a vote of the electors of the county, and for which trustees were to be appointed by the board of county commissioners; these trustees were empowered to "bond the county" for the purpose of building and equipping a county high school building." (Emphasis supplied)

The conclusion to be reached from the legislative provision for, and the judicial recognition of county high schools and their method of financing is that common school districts are not the exclusive means of school financ-

ing. In fact, the Court in Rankin vs. Love was not faced with the question of levies for maintenance and operation, and such problems were outside of the scope of the decision. It is most important to remember that the real question decided by the court was the limitation of indebtedness as evidenced by the fact House vs. School District No. 4 of Park County, 120 Mont. 319, 184 Pac. (2d) 285, was expressly overruled.

Two of the fundamental sources of income for the schools of our state are the county wide levy for common schools, Section 75-3706, Revised Codes of Montana, 1947, and the county wide high school levy, Section 15, Chapter 208, Laws of 1951. If the school district is the exclusive "taxing unit" for the support of both elementary and high schools then the county wide levies would be unconstitutional. This cannot be the intent of the court and it would not be reasonable to read into the case of Rankin vs. Love problems which were not before the Court for consideration and concerning which the Court has ruled as set forth above. Historically the county wide levy for the support of the common schools antedated the Montana Constitutional Convention of 1889 as Section 44 of the Laws of 1871 provided for such a levy and the statute was operative in 1889.

Section I of Article XI of the Montana Constitution as construed in Evers vs. Hudson, supra, gives legal sanction to the legislative creation of high school districts and the fact the decision did not overrule Pierson vs. Hendricksen, 98 Mont. 244, 38 Pac. (2d) 991, and Berthot vs. Gallatin County High School District, 102 Mont. 356, 58 Pac. (2d) 264, permits the conclusion that high school districts are legal entities for school purposes.

It is therefore my opinion that levies on high school districts and the county wide levies for the maintenance of high schools are valid and legal levies.

Very truly yours,
ARNOLD H. OLSEN
Attorney General