

high schools of a county, due to a clerical error, cannot be corrected by a levy in excess of ten mills on all the property in the county in the next fiscal year.

March 29, 1952.

Mr. John Michael McCarvel
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. McCarvel:

You have requested my opinion concerning an error made in the high school levy in your county. You advise me that the high school budget provided for a ten mill county wide levy, but a clerical error was made and the actual levy made by the county commissioners was a four mill levy. You ask if a sixteen mill county wide levy may be made for the next fiscal year.

Section 15, Chapter 199, Laws of 1949, as amended by Chapter 208, Laws of 1951, provides for an annual county wide levy of ten mills for the support of the high schools of the county. This section limits the county wide levy to the fiscal year for which the levy is made. Also, the foundation program for the current year is a limitation for the levy. To permit the levy for one year to be increased above the authorized amount for the purpose of realizing funds to restore moneys due to an erroneous levy for a previous year is not within the contemplation of the statute. The applicable rule is found in 51 Am. Jur. 621, where it is said:

"It is essential to the validity of a tax that it be of no greater amount than was authorized by the legislature, and any excess over the amount so authorized will render the assessment void, however, trivial the excess may be."

See: State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P. (2d) 107, 103 A.L.R. 376.

Opinion No. 73

Schools and School Districts—Error in County Wide High School Levy—High School Budgets.

Held: The failure to levy the full ten mill county wide levy for the

During this current fiscal year there are sufficient appropriations in the budget to meet the needs of the high school, but there are not funds to meet the appropriations. The only solution is to register warrants as permitted by Section 16-2604, Revised Codes of Mon-

tana, 1947, as Section 75-4532, Revised Codes of Montana, 1947, limits the payment or registration of warrants to the amount of the appropriation. The registered warrants will be an item for payment in the budget for the following year.

Because of this additional expense, it may be necessary to vote an extra levy on the school district for the budget for the next fiscal year.

It is therefore my opinion that the failure to levy the full ten mill county wide levy for the high schools of a county, due to a clerical error, cannot be corrected by a levy in excess of ten mills on all the property in the county in the next fiscal year.

Very truly yours,
ARNOLD H. OLSEN
Attorney General