

**Opinion No. 92.****Schools and School Districts—Extra Levies—One Question for An Extra Levy on a High School District.**

HELD: 1. In the submission of the question to the qualified electors of a high school district whether an extra levy should be authorized the amounts needed for each high school must be incorporated in one question.

2. An extra levy may be voted by the electorate of a school district for the use of the high school of the district although the school district is a part of a high school district.

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August 26, 1954.

Mr. W. M. Black  
County Attorney  
Toole County  
Shelby, Montana

Dear Mr. Black:

You have requested my opinion concerning the validity of two special elections for extra levies. You advise me that there are two high schools in one high school district. You also state that separate ballots were used at the election submitting propositions for extra levies for the support and maintenance of each of the two high schools. The electors approved the extra levy for one of the high schools and rejected the levy on the high school district for the other high school. Subsequently, a special election was held in the common school district and a special levy was approved for the support and maintenance of the high

school whose request for an extra levy on the high school district had been rejected.

In considering the problem, it is necessary to observe the provisions of two pertinent code sections. Section 75-3801, R. C. M., 1947, as last amended by Chapter 247, Laws of 1953, reads in part as follows:

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“(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its foundation program . . . for the purpose of maintaining the high schools of said district or the county high school, . . . or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, . . . and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district.” (Emphasis supplied.)

The above quoted authorizes an election on the question of an additional levy for the support of a district high school to the voters of the district in which the high school is situate.

Section 75-4609, R. C. M., 1947, as last amended by Chapter 120, Laws of 1953, provides:

“Special Tax Levy — Election. 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 of 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.”

This section permits the qualified electors of a high school district to authorize an additional levy to support a high school which levy would be made over the entire high school district. It is important to observe that the statute states that one levy may be made for the high school of the district. As a general rule, there is only one high school in each high school district, but under the facts here there are two high schools in a high school district. The taxing unit is the high school district and the additional levy may be imposed for high school purposes on this taxing district. The authorized purpose as stated in the statute is to permit an additional levy to raise money for high school purposes above the foundation program. The total amount needed for high school purposes in the district should be incorporated in this single levy. If each

of the high schools needs additional funds, then only one question incorporating the full amount for each high school should have been submitted to the electors. Submitting the question in this manner would comply with the language used in the statute which requires but one additional levy and also prevent discrimination between the two schools within the taxing area. Section 11 of Article XII of the Montana Constitution requires uniformity in taxation and in *Com. v. Alden Coal Co.*, 251 Pac. 134, 96 A. 246, L. R. A. 1916 F. 154, it was held that the constitutional provision that taxation shall be uniform applies not only to the levy and assessment of the tax, but to its expenditure and distribution as well. The submission of the two questions resulted in a tax over the high school district for the use of one of the two high schools, and as a consequence there was a lack of uniformity in the distribution of the funds.

The tax which was approved by the electorate of the common school district for the support of the high school of the common school district complies with Section 75-3801, R. C. M., 1947, as amended, and is uniform and not discriminatory.

It is, therefore, my opinion that:

1. In the submission of the question to the qualified electors of a high school district whether an extra levy should be authorized, the amounts needed for each high school must be incorporated in one question.

2. An extra levy may be voted by the electorate of a school district for the use of the high school of the district although the school district is a part of a high school district.