

Opinion No. 54

SCHOOLS AND SCHOOL DISTRICTS; Elections; special levy election for county high schools, procedure—SCHOOLS AND SCHOOL DISTRICTS; High Schools; County High Schools; special levy elections, procedure—Section 23-1203, RCM, 1947; Sections 75-3801 through 75-3805, RCM, 1947—Opinion 25, Volume 22, Attorney General's Opinions, no longer applicable

- Held:** 1. An election submitting the question of a special levy for a county high school must be initiated by a resolution of the trustees of the county high school and the election conducted pursuant to the provisions of Section 75-3802 through 75-3805, R.C.M., 1947, which are the statutes prescribing the method for an election for an extra levy for school districts.
2. It is not necessary for a qualified elector to be registered to vote on the question of an extra levy for a county high school.

March 4, 1960

Mr. Robert E. Purcell
County Attorney
Garfield County
Jordan, Montana

Dear Mr. Purcell:

You requested my opinion concerning the procedure for voting a special levy for the operation of your county high school. You advise me there are no high school districts in your county and also no district high schools.

Sub-section 2 of Section 75-3801, R.C.M., 1947, authorizes the submission to the electors of the question of an additional levy for the operation and maintenance of a county high school. This statute states that:

“. . . in the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, 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 elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in Chapter 130, Laws of 1949 (75-4609).”

Since the above quoted statute does not fix the details and exact manner of conducting the election, the legislature must have intended to adopt some existing procedure as the most convenient way of holding a special levy election for a county high school. Sub-section 2 of Section 75-3801, R.C.M., 1947, as amended, provides the election shall be held “either at the regular annual election held in said districts, or special elections called for that purpose by the board of trustees of said county high school.” As there is no annual election of trustees of a county high school, the trustees being appointed, the reference to the annual elections in school districts indicates that school district election procedures are to be adopted by the trustees of the county high school in the conduct of the special levy election for the use of the county high school.

If the trustees of the county high school determine that additional funds are necessary, then, by resolution of the board, a special election may be called. This resolution should fix the exact amount necessary to be raised by the special levy, which amount will be in addition to all other authorized levies and funds available for the budget. The date of the election, the voting places, the judges of elections and the manner giving notice should also be fixed in the resolution. The provisions of Sections 75-3802 through 75-3805, R.C.M., 1947, as amended, fix the procedure for a special levy election.

Notice of special election must be given for a ten day period as required in Section 75-3802, R.C.M., 1947, and must be posted at each school house. If the special election for the county high school is held on the same day as the annual election of school trustees, then it might be advisable to designate the same judges and same voting places as used by the school districts in conducting the election and comply with the provisions of Section 23-1203, R.C.M., 1947.

Sub-section 2 of Section 75-3801, R.C.M., 1947, states that the proposition must be submitted to the qualified electors residing within the county who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county, and school

taxes. It is not required that the electors be registered. In the case of *State ex rel. Lang v. Furnish*, 48 Mont. 28, 134 Pac. 297, it was held:

"It is a principle long established that registration is no part of the qualifications of an elector and adds nothing to them; it is merely a method of ascertaining who the qualified electors are, in order that abuses of the elective franchise may be guarded against."

A prior opinion of this office, Opinion No. 25, Volume 22, Report and Official Opinions of the Attorney General, held that a special levy for a county high school must be conducted under the provisions and statutes prescribing the method of holding a county election. This opinion was written relative to Chapter 274, Laws of 1947, which, by its terms, has expired and, as a consequence, Opinion No. 25 of Volume 22 is no longer applicable.

It is, therefore, my opinion that an election submitting the question of a special levy for a county high school must be initiated by a resolution of the trustees of the county high school and the election conducted pursuant to the provisions of Section 75-3802 through 75-3805, R.C.M., 1947, which are the statutes prescribing the method for an election for an extra levy for school districts.

It is also my opinion it is not necessary for a qualified elector to be registered to vote on the question of an extra levy for a county high school.

Yours very truly,
FORREST H. ANDERSON
Attorney General