

Opinion No. 82**Taxes—Livestock—Limitation on Use of Taxes—Construction of
Laboratory—Art. XII, Section 9—Sections 84-5209 and 84-5211****Held: Taxes levied under Section 84-5211, RCM, 1947, cannot be used
by the Montana Livestock Sanitary Board for the construction
of a new diagnostic laboratory building.**

November 26, 1958

Dr. John W. Safford
Livestock Sanitary Board
State Veterinarian
Capitol Building
Helena, Montana

Dear Dr. Safford:

You have requested my opinion whether monies derived from the livestock tax authorized by Section 84-5211, RCM, 1947, can be used by

the Montana Livestock Sanitary Board for the construction of a new diagnostic laboratory building.

The present livestock building was constructed in 1918, apparently under the authority of Chapter 127, Laws of 1917, which authorized the Board to establish and maintain such a structure. The Session Laws of 1917 and subsequent years contain no appropriation for the erection of such a structure. The inquiry is whether Section 84-5211, *supra*, permits the use of such funds for a new diagnostic building.

Article XII, Section 9, Montana Constitution provides in part:

“. . . in addition to the levy for state purposes above provided for, a special levy in addition may be made on live stock for the purpose of paying bounties on wild animals and for stock inspection, protection and indemnity purposes, as may be prescribed by law, and such special levy shall be made and levied annually in amount not exceeding four mills on the dollar by the state board of equalization, as may be provided by law.”

Pursuant to this constitutional authority, Chapter 127, Laws of 1915 was enacted and provided in part:

“In addition to appropriations made for such purposes a tax is hereby authorized and directed to be levied on all livestock in this state, for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state of Montana and for the payment of bounties on wild animals, as hereinafter specified.

“. . . a separate levy of not exceeding one and one half (1½) mills for the use of the State Live Stock Sanitary Board for the payment of indemnity for animals slaughtered and of expenses incurred in investigating and suppressing diseases including expenses of quarantine and all expenses incurred for such purposes; . . .”

Chapter 127, Laws of 1915, *supra*, was amended by Chapter 152, Laws of 1929 and authorized the special tax levy to be used for “laboratory maintenance.” This amendment clearly excludes the use of such funds for erecting buildings.

Authority to maintain a building does not imply authority to construct a building. In *Small v. Delaney*, 25 N.Y.S. (2d) 387, 394, 175 Misc. 795 the court stated:

“. . . maintenance connotes the acquisition of items necessary to the repair and preservation of an existing structure and incidental to the carrying on of the service.” See, also, *Love v. Rockwall Independent School District*, 194 S.W. 659,Tex. Civ. App.....

In *Holman v. Santa Cruz County*, 205 Pac. (2d) 767, 778, 91 Cal. App. (2d) 502, a fire district used funds to construct a new dam. An

injunction was sought to prevent the levying of a tax for this purpose. The lower court limited the use of fire district funds for the maintenance of existing facilities. The fire district contended maintenance included construction of new facilities. The court denied this position and stated:

" . . . The vital question in this case was what funds, if any might be used in the construction of the dam. Funds originating under the power to levy an annual maintenance tax may be used for such specific purposes and none other. The attempt to use such funds to pay for the dam or to buy lands was illegal.

" . . . The word as used in sections 14152 and 14153 means the repairing or keeping in good condition the articles or things that exist, including salaries and costs of operation and not the creation of something new . . ." See, also, Madley v. Trustees of Conroe Industrial School District, 130 S.W. (2d) 929, 933,Tex. Civ. App.....

Therefore, it is my opinion that absent a specific statute to the contrary, the Montana Livestock Sanitary Board is not authorized to use taxes levied under Section 84-5211, RCM, 1947, for the construction of a new diagnostic laboratory building.

Very truly yours,
FORREST H. ANDERSON
Attorney General