

Taxation, Power of Legislature, Special. Legislature, Power to Levy Taxes.

1. The Legislature has no power to levy a tax except for State purposes, and cannot exceed the limit named in Section 9, Art. XII, State Constitution.

2. Taxes levied for Bounty Fund, Stock Inspection, Indemnity, etc., are a part of the two and one-half mill limit named in said Section 9 of the State Constitution.

Helena, Montana, Feb. 26, 1907.

Hon. William Scallon,
Chairman, Judiciary Committee,
House of Representatives,
Helena, Montana.

Dear Sir:

I am in receipt of your favor of the 22nd inst. submitting for consideration of this office the question as to "the constitutionality of the special levies now provided by the statutes on live stock, the State levy for the general State purposes now being two and one-half mills."

Section 1. of Article 12 of our State Constitution confers authority upon the Legislative Assembly to provide for the support and maintenance of the State, and makes it the duty of that department of the State Government to levy a uniform rate of assessment and taxation and to prescribe regulations for securing a just valuation for taxation of all property not otherwise provided for. Section 5 of the same Article specifically provides that the Legislative Assembly shall not levy taxes for county, town or municipal purposes, and it is therefore apparent that the only tax which the Legislative Department of the State Government can levy is a tax for State purposes; and Section 9 of the same Article limits the rate for such purposes under the present assessed valuation of the State to two and a half mills on each dollar of valuation. Section 34, Article 5 of the Constitution provides "No money shall be paid out of the Treasury except upon appropriations made by law.", while Section 12, Article 12 prohibits the legislature from making any appropriations or authorizing any expenditure whereby the expense of the State during any fiscal year shall exceed the total tax provided by law, and also prohibits the Legislature from increasing the levy in excess of the rates allowed by Section 9. An exhaustive discussion on this subject may be found in the opinion in *People ex rel vs. Scott*, 9 Col. 422, wherein the court said in part: (On page 430)

"If then, any definition of the terms 'State purposes' is necessary to a decision of the questions presented by the defense of the Respondent it is to be found in the revenue article itself. Any legitimate expenditure of the State necessary to be provided for by a State tax is a State purpose. and the tax to be provided is a tax for a state purpose. It has been repeatedly stated in the decisions of this court, on

evidence deemed by us sufficient to justify the statement, that a principal design of the Framers of the Constitution, and of the people in adopting the same, was to inaugurate an economical State Government, and in order to carry out this purpose limitations against extravagance in the administration of it were inserted. Now, with such a purpose in view, how essentially unavailing it would be to limit the rate of taxation as to certain governmental purposes and to leave it without restraint or limitation as to all other purposes for which revenue may be provided."

The special tax must therefore be considered as constituting a part of the two and a half mill levy authorized by the Constitution.

As to whether one class of property could be subjected to a higher rate than other classes under the provisions of Sections 1 and 2, Art XII of the State Constitution, provided the highest rate did not exceed the limitation prescribed in Section 9 of that article, is a question of sufficient doubt to justify its submission to the Supreme Court, for the reason the authorities are in conflict and no decision on that subject has ever been rendered by the Supreme Court of Montana.

The general rule, however, as deduced from the authorities, appears to be "Whether the constitutional provision requires uniformity in the imposition of taxes, in which case taxing classes at different rates is permitted, or whether such provisions provide for equality and uniformity, in which case the rate imposed on each class selected for taxation must be identical, such provisions unite in requiring that each member of a class in the one case, or each member of the classes in the other case, must proportionately bear its burden with each and every other member of the class or classes respectively as the case may be."

27 Am. & Eng. Ency. Law, 602.

The system adopted in other states as Washington, California, Idaho and Wyoming, is to either make appropriations out of the general fund of the State Treasury for paying bounties, etc., or under constitutional provisions similar to Section 4, Article XII of our constitution to vest in the county commissioners authority to levy taxes for such purposes, in which case the bounty would be paid from the county treasury instead of from the state treasury. North Dakota has a law similar to the one now on our statute books, but it does not appear to ever have been before the court for interpretation or consideration as to its constitutionality.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.