

Tax Levy, Limitation of for State Purposes. Levy of State Tax, Limitation of.

The constitutional limitation upon the levy of state taxes, based upon the valuation of taxable property in the state, does not affect the valid levy made by the legislature prior to the total valuation increasing into another class, and only limits the action of the legislature after the increased valuation has been ascertained.

Helena, Montana, November 8, 1909.

State Board of Examiners,

Helena, Montana.

Gentlemen:

I am in receipt of your request for an opinion upon the following proposition: The total assessed valuation of the state of Montana for the year 1908 was \$248,774,792.00, while the total assessed valuation of the state for the year 1909 was \$280,401,064.00, showing a total increase in the last year of \$31,626,272.00. Upon these figures it is estimated that the increase in the value of property for taxation for the year 1910 will make the total valuation of the property of the state more than \$300,000,000.00. The legislative assembly for the year 1909, by chapter 88, laws of 1909, made a levy for state purposes for the year 1909 of two and one-half mills on each dollar of the valuation of all property in the state liable to taxation, and also made a like levy of two and one-half mills on all such property for the year 1910.

Upon such statement of facts, the following question is submitted: If the increase in taxable property of the state in 1910 raises the total valuation to an amount in excess of \$300,000,000.00 what will be the tax levy for state purposes for the year 1910, and has the board of examiners authority at this time to act upon the assumption that the levy for 1910 will be two and one-half mills and therefore to audit bills and authorize expenditures on the basis that the revenue received for the year 1910 will be on the basis of a two and one-half mill levy regardless of the total assessed valuation of the state for that year?

Section 9, of article 12, of the constitution reads as follows:

"Section 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars (\$100,000,000), the rate shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars (\$300,000,000), the rate shall never thereafter exceed one and one-half (1½) mills on each dollar of valuation; unless a proposition to increase such rate specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have re-

ceived a majority of all the votes cast for and against it at such election."

It will be noticed, from a reading of the above section, that it provides that "whenever the taxable property in the state shall amount to three hundred million dollars (\$300,000,000), the rate shall never thereafter exceed one and one-half mills on each dollar of valuation."

Section 1, of said article 12, provides that:

"The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation."

This section vests the authority in the legislature to make the levy of taxes for state purposes.

Section 2593, revised codes, provides:

"That there must be levied at each session of the legislative assembly upon all property in the state liable to taxation a sufficient sum to realize the amount necessary to meet the appropriations made for the two succeeding fiscal years."

While section 6, of article 5, of the constitution provides that the legislative assembly shall meet at 12 o'clock noon on the first Monday of January next succeeding the general election provided by law, and at 12 o'clock noon on the first Monday of January of each alternate year thereafter.

Therefore, as the legislature meets only once in two years, and as it is the duty of the legislature, under the constitution and statutes, at that time to make a levy of taxes for the two succeeding years, sufficient to realize the amount necessary to meet the appropriation for such two years, it necessarily follows that in making such levy the legislature must use as the basis for determining the levy the total assessed valuation of the state as it then exists. When the levy of two and one-half mills for the years 1909 and 1910 was made by the legislative assembly of 1909 the total assessed valuation, as shown above, was \$248,774,792. Under that valuation the legislature had the constitutional authority to make a levy of two and one-half mills. If they considered that such a levy was necessary to raise an amount to meet the appropriations made for the two succeeding fiscal years, and the fact that they made such levy of two and one-half mills, is conclusive that, in their judgment, such levy was necessary to meet such appropriations.

The question then arises as to what effect the provisions of section 9, of article 12, has upon such levy as heretofore made, in the event that the total assessed valuation for 1910 shall amount to \$300,000,000.00 or more. Said section expressly states that when the valuation amounts to such sum that the rate shall never thereafter exceed one and one-half mills. It will be noticed that this section of the constitution does not fix the amount of the levy, but simply says it shall not "thereafter exceed" a certain amount. Therefore, when the valuation is \$300,000,000 or more the rate is not fixed by the constitution, as such provision of the constitution is not self executing, and the only authority under the constitution which has the right to fix such levy is the legislative assembly. As the legislature only meets once in two years, and it alone has

the authority to fix the levy, it necessarily follows that the only construction to be given to said section 9, of article 12, of the constitution is that when the total assessed valuation reaches \$300,000,000.00 or more that "the rate shall never thereafter (when levied by the legislature) exceed one and one-half mills on each dollar of valuation." For we must presume that the framers of the constitution foresaw the possibility of the valuation of the state increasing from one class to another between sessions of the legislative assembly. But the rate of the levy fixed by the legislature at its last session, which was constitutional and valid under the total valuation of the property of the state as then shown, must necessarily continue in force until the next meeting of the legislature, at which it fixes the rate of the levy for the next succeeding two years. If this were not the case, and the valuation should increase from one classification to another between sessions of the legislature, there would be no levy fixed for the year in which the valuation exceeded that of the classification in force at the time the last levy was made by the legislature, as there is no levy fixed by the constitution under the new classification, and no officer or board of the state has authority to make a new levy when the total valuation increases so as to bring it into another classification under section 9, of article 12, of the constitution.

Therefore, in our opinion, the levy of two and one-half mills made by the legislature in 1909 continues in full force and effect until the next meeting of the legislature, and if at that time the total valuation is \$300,000,000.00 or more, then the legislature is limited in their levy to an amount not exceeding one and one-half mills, (in the event that the proposed constitutional amendment now pending fails to be adopted.)

I am also of the opinion that the state board of examiners has the right and authority to audit claims and allow expenditures of the state against the appropriations made by the last legislature, upon the theory that the two and a half mill levy for the year 1910 is valid and constitutional, regardless of the assessed valuation of the state for that year.

However, the above question is of such importance to the taxpayers of the state, and to the various state institutions which are relying upon the appropriations made for their benefit by the last legislature, and is one on which I am unable to find any decisions, as the question does not appear to have arisen in other states having similar constitutional provisions, and I would therefore suggest that the matter be taken into the courts, if possible, for the purpose of having the question definitely settled at the earliest possible date.

If my construction of the constitution is sustained it will relieve your board of much embarrassment and difficulty in handling appropriations made by the last legislature, for there then should be sufficient revenue for the year 1910 to meet such appropriations. On the other hand, if my construction is not sustained your board should know it as soon as possible so as to curtail expenditures wherever possible without serious injury to the management of state affairs.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

Note.—The above opinion sustained in *Bennett vs. Board of Examiners*, 104 Pac. 1055.