

County Commissioners, Duty to Levy Tax for Interest on State Bonds. State Bonds, Levy of Tax to Pay Interest on. Bonds of the State, Levy of Tax to Pay Interest on. Taxes, for the Payment of Interest on State Bonds.

It is the duty of the board of county commissioners of the

several counties to see that the levy to pay interest, and create a sinking fund, for the payment of state bonds, is included in the levies upon property in their respective counties, and that such taxes are collected. A failure so to do is a violation of their official duties, for which they would be liable on their official bonds, or would be liable to removal from office.

Helena, Montana, November 29, 1909.

Hon. E. E. Esselstyn,
State Treasurer,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of November 17, which reads as follows:

"Under date of November 10th I wrote to Mr. H. A. Featherman treasurer of Granite county, calling his attention to the fact that his report for the month of October failed to show any amount of taxes collected for the state bond fund, in accordance with chapter 88, page 118, session laws of 1909, to which he replied that the county commissioners refused to make the levy for the bonds, as required by chapter 88, page 118, session laws of 1909."

"As I am desirous of having your opinion in the matter, I enclose herewith copies of the letters referred to, and await the pleasure of your reply as to what action should be taken in the matter."

Chapter 58, laws of 1907, provide for the issuance of state bonds. This law was duly submitted to the electors of the state, pursuant to the provisions of section 2 of article XIII., of the constitution of the state of Montana, at the general election in 1908, and such bond issue duly authorized by the electors of the state. Section 5, of said chapter 58, provides that there shall be levied annually one-fourth of a mill on the dollar of all taxable property, to be used exclusively for the payment of the interest on such bonds and to constitute a sinking fund for their redemption. Thereafter, the legislature of 1909, by sections 3 and 4 of chapter 88, duly made such levy for the years 1909 and 1910, in accordance with said section 5, of chapter 58, and of said section 2, of article XIII., of the state constitution. Therefore, the taxable property in each county of the state is subject to such levy and is liable for its proportionate share necessary to meet the interest on, and provide a sinking fund to pay these bonds. Such provisions are mandatory upon the boards of county commissioners of the several counties of the state, and it is their duty to see that such levy is included in the levies upon property in their county spread upon the assessment book, and that such taxes are collected. It is their duty to know the law and to follow it without any special instructions from anyone. However, we understand that your office, shortly prior to the time for fixing the county levies, notified each board of county commissioners of the law requiring a one-fourth mill levy for interest on state bonds. The failure of the county commissioners to have this levy spread

upon the assessment book, and the taxes collected, is clearly a violation of their official duties, for which they would be severally liable upon their official bonds for the amount of such taxes, if lost to the state bond fund, or they would be liable to removal from office under section 9006, revised codes.

However, the important thing to the state is to secure from each county its pro rata of this state bond fund, and I would suggest that no action be taken upon the official bond, or under section 9006, until after the county commissioners have had an opportunity to pay the amount due from their county to this fund.

Section 2921, revised codes, gives the board of county commissioners authority to transfer surplus monies that may be on hand in any of the several funds, except the school fund, to such fund or funds as may be deemed for the best interests of the county, or to appropriate said surplus money to the payment of outstanding indebtedness of the county. The county apportionment of the state bond fund for the year 1909 is clearly an outstanding indebtedness of such county, and, in our opinion, the board of county commissioners would have authority to transfer or appropriate from the general fund of their county a sum sufficient to pay their pro rata on the state bond fund now due.

I would suggest that you take this matter up with the county treasurer of Granite county at once, so that he can lay the same before the board of county commissioners at their regular meeting in December, in order that the state may know definitely what the board intends to do before taking any further action in the matter.

Very truly yours,

ALBERT J. GALEN,

Attorney General.