

**Taxes, State Officers Cannot Be Vested With Power to Order County Officers to Levy. Officers of State, Cannot Be Vested With Power to Order County Officers to Levy Taxes.**

A state official or state board cannot be vested with legal authority to order county officers to levy taxes upon property in their county, for the reason that the legislature cannot grant the power of local taxation to persons over whom the population to be taxed could exercise no control.

January 4, 1911.

Mr. M. L. Dean,  
Secretary and Inspector at Large,  
Missoula, Montana.

Dear Sir:

Your letter of December 27th has been received, requesting my opinion upon the following propositions:

1. Can a state official, or state board be vested with legal authority to order a county assessor or county commissioners to levy on all taxable property in the county and collect special fund in their respective county for special purposes, to be used in the county collected?
2. Could several counties be grouped and a district formed under the same regulations?

In reply, I will say, that Section 4, of Article XII, of the Constitution of the State of Montana, provides that the legislative assembly,

shall not levy taxes upon the inhabitants or property in any county, city, town or municipal corporation for county, city, town or municipal purposes, but it may by law vest in the corporate authorities thereof power to assess and collect taxes for such purposes.

Under this provision of the constitution, a law could not be passed vesting in any state official or state board legal authority to order the county assessor or county commissioners to levy a tax upon property in their county; and consequently several counties could not be grouped under a similar regulation.

The purpose of this constitutional clause was to prevent the legislature from granting the power of local taxation to persons over whom the population to be taxed could exercise no control. In the event such a law could be passed, it would take away from the people of the county the right to self government.

The same question involved here was thoroughly discussed and decided by our supreme court in the recent case of state ex rel. Gerry vs. Edwards, reported in 111 Pac. page 734.

Yours very truly,

ALBERT J. GALEN,

Attorney General.