

General Highway Law, Levy of Tax Under. Taxation, Under General Highway Law. Chap. 75, Laws 1913, Not Unconstitutional.

Chap. 75, Laws 1913, not being essentially a revenue measure, but a general highway law, and the taxes therein authorized being wholly for county purposes, it is not unconstitutional, as being in contravention of Art. V, Sec. 32, Constitution of Montana. The board of county commissioners, therefore, is authorized to levy a tax under it.

July 25th, 1913.

Hon. Charles J. Marshall,
County Attorney,
Lewistown, Montana.

Dear Sir:

In answer to your telephone communication of the 24th instant, in which you submitted the following question for my decision:

"Is the board of county commissioners authorized to levy a tax under the new general highway law as provided for on page 140 and 153, Session Laws of 1913, or shall we make levy under the old law?"

I will say, Chap. 75 of the Session Laws of the Thirteenth Legislative Assembly is a general highway law, as is indicated by its title, and as also indicated there, intended to take the place of Chap. 2 of Title 6 of Part 3 of the Revised Codes, relating to highways and roads. The provisions of Chapter 2 of the new law are essentially the same provisions as were found in Sec. 1344 of the Revised Codes of 1907, relating to a general tax for the support of a general road fund of the county, and Chapter 5 of the new law is essentially the same as Sec. 1412 of the Revised Codes of 1907, providing for a special bridge fund. Both of these provisions in the new law as to taxation are incidental to it, and are not laws passed for the express purpose of raising state revenue.

Sec. 32 of Art. 5 of the Constitution of Montana:

"All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments as in the case of other bills,"

Has been held in the case of *Evers v. Hudson*, 36 Mont. 146, 92 Pac. 462, to apply only to measures contemplating a tax upon the property of the whole state and for the purposes of raising revenue for the state; and in *State v. Burnheim*, 19 Mont. 512, 49 Pac. 441, the supreme court of our state held that this provision of the constitution must be confined in its meaning to bills to levy taxes in the strict sense of the word, and has not been understood to extend to bills for other purposes which may incidentally create revenue.

While it might be contended that the new highway law is unconstitutional as being in contravention of Sec. 32 of Art. 5 of the Constitution of Montana, since the bill originated in the senate, it is our opinion that such contention is without merit. Every presump-

tion is in favor of the validity of the law until the contrary very clearly appears, and in view of the holdings of our supreme court, above indicated, and the fact that the law under consideration was not essentially a revenue measure, you are advised that the board of county commissioners is authorized to levy a tax under the general highway law, instead of under the old law.

Very truly yours,

D. M. KELLY,
Attorney General.