

**Tax Levy, Limitation. Limitation, of Tax Levy. Powers, of Commissioners. Commissioners, Powers of to Levy Taxes.**

Par. 13, Sec. 2894, R. C., imposes a duty upon boards of county commissioners to levy annually such taxes as may be necessary to defray the current expenses of counties, including salaries otherwise unprovided for, not exceeding sixteen mills on the dollar of the assessed valuation in any one year, and to levy such taxes as are required to be levied by special or local statutes. Held, that the limitation of sixteen mills applies only to current expenses for county purposes, and that a general levy in excess of sixteen mills for other purposes is lawful.

August 26th, 1913.

Hon. Henry V. Beeman,  
County Attorney,  
Forsyth, Montana.

Dear Sir:

Under date of the 21st instant you wrote to this office, requesting my opinion with reference to a tax levy made by the board of county commissioners of Rosebud County for the current year. Accompanying your letter, a copy of an opinion rendered by you upon the proposition was enclosed. I gather from your opinion that the levy made by your board of commissioners is as follows:

General Fund .....	10	Mills
Contingent Salary Fund .....	1.25	Mills
Bond Interest Fund .....	.5	Mills
Poor Fund .....	.25	Mills
Bridge Fund .....	2	Mills
General School Fund .....	4	Mills
General Road Fund (exclusive of property within the City of Forsyth .....	5	Mills

As furnishing a proper basis for my opinion as to the legality of this levy, I take the liberty of quoting from your opinion as follows:

"Subdiv. 13 of Sec. 2894 provides that an annual tax shall be levied by the board of county commissioners for county purposes, as may be necessary to defray the current expenses thereof, not to exceed 16 mills on each dollar of the assessed valuation for any one year, and to levy such taxes as are required to be levied by special or local statute. I believe that it is the intention of the legislature to include as current expenses practically all county expenditures necessary in conducting the affairs of a county, and it is my opinion that in such expenses are included the salaries of county officials, the care of the poor, and the building and maintenance of highways and bridges, and many other expenditures that I need not now mention. Therefore, it is my opinion that the levy for the contingent or salary fund, for

the poor, bridge and road funds come within the limitation of the 16 mills, as provided for by Sec. 2894."

In the course of your opinion you reach the conclusion that the levy for general school purposes and the levy for bond interest fund are not included within the limitations of Sec. 2894, but that the levy for poor, bridge and road funds are included within said limitation, and that the levy for these purposes, inclusive of the contingent and general fund levies, brings the total to 18.50 mills, and that, therefore, the levy made by the board of commissioners exceeds the 16 mill limitation by  $2\frac{1}{2}$  mills, and is therefore unlawful. You cite as authority for your conclusion in the matter the case of Grand Island & Northern Wyoming Railway Company v. Baker, 6 Wyo 360; 71 American State Reports, 926; 34 L. R. A. 835. An examination of this case discloses that the conclusion therein reached was due to the fact that in that state there is a constitutional provision to the effect that no county shall create any indebtedness exceeding a specified amount upon the assessed value of the taxable property in it, and that compulsory obligations imposed by the legislature must be included within the limitation. This case, I am of the opinion, cannot be considered as authority in this state, for the reason that we have not, so far as I am aware, any constitutional limitation upon the taxing powers of counties; on the contrary, Sec. 4 of Art. XII of the Constitution vests the legislature with power to pass laws vesting in the corporate authorities of counties, cities, towns or municipal corporations power to assess and collect taxes; pursuant to this provision numerous statutes have been enacted. Sec. 2598, Revised Codes, is a general expression of the legislative will, and by its provisions it is made the duty of the board of county commissioners of each county, on the second Monday of August of each year, to fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and to levy taxes upon the taxable property within the county. The statutory provision on which you rely, as authority for holding the levy of the board unlawful, is paragraph 13 of Sec. 2894, R. C. This section imposes a duty upon the board to levy such tax annually for county purposes as may be necessary to defray current expenses thereof, including salaries otherwise unprovided for, not exceeding 16 mills on each dollar of the assessed valuation for any one year, and to levy such taxes as are required to be levied by special or local statutes. An analysis of this paragraph discloses that the limitation of 16 mills applies to current expenses for county purposes. The question, therefore, arises as to whether this phrase includes within its terms only such charges and expenses as are incidental to conducting the business of a county, or whether its terms are exclusive, arbitrary and mandatory as to all expenditures which a county may make, exclusive of the general school fund and the bonded interest fund, as you hold in your opinion.

I am unable to agree with your contention that this paragraph is a limitation upon the taxing power to the extent that you have

advised the board, but am of the opinion that the phrase, "current expenses for county purposes," is to be interpreted according to the ordinary meaning of the words employed, and if this is true, the section refers only to the usual and customary running expenses of the county government, to the exclusion of special and extraordinary expenditures, such, for instance, as the maintenance and construction of highways, bridges, etc., as well as the liquidation of bonded indebtedness and the maintenance of public schools, for in all such cases we have special statutory enactments, and expenditures for these purposes and things are not a part of the ordinary running expenses of the county government, but extraordinary expenses by virtue of the specific laws upon the subject, for in each instance taxes collected, by virtue of these specific enactments, belong, not to the general fund of the county, but to the special fund for which the levy is made, and may not be used for any other purpose. By way of illustration, Sec. 1, Chap. 2 of Chap. 72, Session Laws of the Thirteenth Legislative Assembly, is a mandatory statute, providing for an annual levy in each county of not less than two mills nor more than five mills for general road purposes, and it is significant that in this section is found the expression that road taxes when collected "shall be payable to the county treasurer with other general taxes." I am, therefore, unable to agree with your contention that the board exceeded its power in making the levy as it did, and am of the opinion that the only items of the levy as made, included within the 16 mill limitation, are:

General Fund .....	10	Mills
Contingent Salary Fund .....	1.25	Mills

State v. Board Commissioners, 119 Pac. 327 (Kan.).

You are, therefore, advised that, in my opinion, the levy as made by the board of county commissioners of Rosebud County is in all things lawful.

Yours very truly,

D. M. KELLY,  
Attorney General.