

**Tax Levy, Street and Alley Purposes. Streets and Alleys,
Tax Levy for. Ordinance, Necessity for Passage of.**

Before the council of an incorporated city or town can levy a tax for street and alley purposes, the collection of such tax levy, the city treasurer not having been authorized, they must determine by resolution the amount of taxes to be levied for the current fiscal year, and certify same to the town treasurer.

September 18th, 1913.

Hon. C. F. Gillette,
County Attorney,
Hardin, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 30th ultimo, submitting the following question for my opinion:

"Can an incorporated town, by resolution provided for by Sec. 3358, Revised Codes of 1907, levy a tax of one and one-half mills for road, street and alley purposes, without having prior thereto passed an ordinance providing for such levy?"

I note that in your opinion such a levy cannot be made without a resolution duly made, in which opinion I concur. Sec. 3358 is specific as to the time and manner, when and by which, a city or town council shall proceed to have taxes collected. Under the language used, a council must on or before the first Monday of October of each year, by resolution, determine the amount of city or town taxes for all purposes to be levied and assessed upon taxable property in the city or town for the current fiscal year, and the city clerk must at once certify to the town treasurer a copy of such resolution, and the county treasurer must collect the taxes as in this article provided. Ordinance No. 5 of the Town of Hardin, enclosed by you, nowhere provides for the collection of the town taxes by the town treasurer. In the absence of such an ordinance the only other method of making a levy would be by the means provided by Sec. 3358, above referred to. Chap. 2 of Chap. 72, Sec. 1, of the Session Laws of the Thirteenth Legislative Assembly, recognizes the necessity of an ordinance for the levy and collection of a general road tax or a special tax, but this does not conflict with Sec. 3358, and such levy would have to be made in accordance with that section.

You are, therefore, advised that before the council of an incorporated town can levy a tax for street and alley purposes, not having authorized the collection of such a tax by the city treasurer, they must determine by resolution the amount of taxes to be levied for the current fiscal year, such resolution to be certified to the town treasurer, as provided for in Sec. 3358 of the Revised Codes.

Yours very truly,

D. M. KELLY,
Attorney General.