

Tax Levy, May Be Submitted at Election for One or More Years—Highway Project Costing More Than \$10,000 Cannot Be Segregated in Units Costing Less Than \$10,000.

Board of county commissioners may not submit a proposition to levy additional tax for one or more years at one election.

Where a highway project in its entirety will cost more than \$10,000, it cannot be segregated in units any one of which would cost less than \$10,000, without holding a special election.

April 6, 1920.

Mr. W. H. Gray,
County Attorney,
Libby, Montana.

Dear Sir:

I have your letter of March 24th, submitting several questions in connection with the expenditure of funds by your county for the construction of highways, and would have answered your letter before this date, except for the fact that you stated therein that Mr. C. T. Young, Chairman of your board of county commissioners, expected to be in Helena last week and would call upon me personally and explain the facts to me in connection with such questions, and I have been waiting to see him before answering your letter.

The first question submitted is in connection with the levying of a special road tax under the provisions of Chapter 169, Session Laws 1919, and is as follows:

"Has the board of county commissioners authority to make an additional five mill levy for road and bridge purposes, as provided in Chapter 169 of the Acts of the Sixteenth General Assembly, in 1920, by reason of their authority granted in the special election held in 1919 authorizing them to do so?"

Chapter 160, Session Laws 1919, authorizes the board of county commissioners to make an increased levy of ten mills or less, if such proposition be submitted to and approved by the electors at a general or special election. There is no provision requiring such proposition to be submitted each year that the board deems it necessary to levy such additional tax, and there is, therefore, no reason why the board may not submit a proposition to levy an additional tax for one or more years at one election. Examining the proceedings of the board in connection with the special election held in 1919, it appears that the board deemed it necessary to levy an additional tax amounting to five mills for each of the years 1919 and 1920, and submitted that question to the electors. I am, therefore, of the opinion that under the authority granted by such election held in 1919 the board may levy such special tax of five mills for the year 1920, and is not required to again submit such proposition for the year 1920.

Answering your second question, can the electors at a special election called for the purpose of voting an increased road and bridge levy, as provided in said Chapter 160, authorize and empower the county commissioners to expend the entire amount raised by said levy, and being in excess of \$10,000 on one project, and if so, should the proposition for such expenditure be included in the ballot provided for in Chapter 160, or should it be in a separate ballot, you are advised that in my opinion, these are two separate and distinct propositions. One proposition is with reference to incurring an indebtedness in excess of 10,000. Each proposition must be submitted at a separate and distinct election, although both elections may be held at the same time, and carried on with the same judges, clerks, polling places, voters' registers and all other election machinery.

The levy for 1919, authorized by the election is valid, and is also the levy for 1920 authorized at the same election, but no part of the funds derived from either or both of such levies can be expended on any one project, when the cost will exceed 10,000, without the questions of such expenditure being submitted to and approved by the electors at either a special or general election.

With reference to dividing the proposed highway into separate projects, leaving an interval of space between each project the cost of each project being less than 10,000, would be indirectly doing just what the board of county commissioners is prohibited from doing directly. This whole highway must be treated and considered as one highway, and it cannot be otherwise treated or considered by attempting to divide it into several parts leaving an interval between each part. The constitution prohibits the incurring of a liability of indebtedness for a single purpose in excess of \$10,000, without the approval of the electors being

first obtained, and you cannot nullify the effect of this provision by attempting to divide a single purpose into several distinct purposes, when in fact it is but a single purpose.

My advice to your board of county commissioners is to hold a special election, submitting to the electors fairly and squarely the proposition of incurring an indebtedness in an amount necessary to construct the entire highway, and, if the board so desires, I see no reason why in the question submitted it may not be stated that the amount is to be expended from the funds derived from the additional or increased levy of five mills for the years 1919 and 1920, and which has already been authorized. If the proposition is approved there is no reason why different parts of the highway may not be let under separate contracts. The whole highway will be treated as one highway, the entire cost of the whole being paid out of the funds derived from these levies, but the highway may be constructed by different contractors, one contractor constructs one portion of the highway and another contractor constructing another portion thereof.

Truly yours,

S. C. FORD,

Attorney General.