

Cities and Towns—Taxation—Levies—Water Departments.

A general property tax may be levied for the maintenance of a town water department. This tax cannot exceed the limitation contained in section 5194 R. C. M. 1921, and for this reason a levy of twenty mills would be invalid.

January 11, 1928.

J. E. Essington, Esq.,
Broadview, Montana.

My dear Mr. Essington:

You have requested my opinion on the following question:

“Has the town of Broadview, Montana, a legal right to levy a twenty mill tax against the assessable property of the town of Broadview for the maintenance of the town water department?”

In the case of *Edwards v. City of Helena*, 58 Mont. 292, our supreme court held that the revenues of a water plant are irrevocably set aside for the discharge of the principal and interest, and a taxpayer who is not a water user cannot be called upon to contribute unless the revenues of the plant are insufficient, in which event only a property tax may be levied to supply the deficiency.

I believe this is also true in respect to the maintenance of a town water supply; therefore, if the revenues of the water works are insufficient to take care of the maintenance a general property tax may be levied.

However, under the provisions of section 5194 R. C. M. 1921, as amended by chapter 175, laws of 1925, a town may levy taxes for general municipal purposes not to exceed fifteen mills on the percentum of the assessed value of its taxable property.

It is therefore my opinion that while a general property tax may be levied for the maintenance of a town water works, this tax cannot exceed the limitation contained in section 5194, supra, and for this reason a levy of twenty mills would be invalid. (See *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206; 215 Pac. 222.)

Very truly yours,

L. A. FOOT,
Attorney General.