

**Poison—Gopher Extermination — County Commissioners
—Taxation—Funds.**

Gopher poison cannot be furnished to others than the duly appointed exterminator except as provided by law. The gopher tax fund is not a revolving fund and no provision is made for levying the tax each year. The levy is on 30% of the assessed valuation, as provided by section 1999 and 2000 R. C. M. 1921.

Dwight N. Mason, Esq.,
County Attorney,
Missoula, Montana.

June 21, 1927.

My dear Mr. Mason:

You have requested my opinion on the following questions:

"1. Can the county commissioners furnish free gopher poison to anyone except the leader or exterminator whom they have appointed in the district?

"2. Can the exterminator who is appointed give the poison which has been furnished by the county to a farmer residing in the district in case a farmer is going to use the poison on his own land?

"3. Is the gopher tax fund to be a revolving fund or may all the money raised by the one mill levy be used every year and the levy made again the next year?

"4. Under the state law can the one mill gopher tax be levied on the assessed valuation of horticulture, farming and grazing lands, or is the one mill levy on 30% of the assessed valuation the same as for other purposes?"

In answer to your questions 1 and 2 it is my opinion that under the gopher extermination act there are two ways in which the county commissioners may proceed after appointing a gopher exterminator, as provided in section 4495 R. C. M. 1921, to-wit: they may proceed to pay the expense of extermination from the general fund of the county, in accordance with the provisions as set forth by sections 4496 and 4497 R. C. M. 1921, and in this event no poison can be furnished to others than the duly appointed exterminator, except those who are unable to procure poison for themselves, in which event the poison is furnished and charged as a tax against the applicant's land the same as that of non-residents, and those who refuse to poison after being notified. The purpose of this provision, no doubt, was to enable those who are willing to poison the gophers on their land, but who were unable financially to do so, to escape the additional expense of the exterminator's labor and thus have a smaller amount charged against their property as a tax.

On the other hand, the county commissioners may proceed to raise a "gopher destruction fund", as provided in section 4498 R. C. M. 1921, and if this procedure is followed, the fund is spent through the gopher exterminator appointed by the board and at such time and in such manner as the board may direct. It is to be noted that no provision is made for the spending of this fund as in the case where the expense is paid from the general fund; neither is any provision made for assessing a tax against the land on which the poison is used. It apparently being the intention that this fund should be spent by the county commissioners for the purpose of exterminating gophers without any expectancy that the county would be reimbursed therefor, by recovering the same from land owners in the way of a tax such as in the case where the money was spent from the general fund.

Therefore, the exterminators simply use the poison as directed by the board of county commissioners without regard to the land upon which the same is used. No provision is made for furnishing poison to others except the duly appointed exterminator, but it is provided that the county commissioners may use the fund to purchase poison which may be furnished to others at cost. Evidently, it was the intention of

the legislature that anyone wishing to assist the county in this work by poisoning on his own land would be encouraged to do so.

In answer to your third question, it is my opinion that the gopher destruction fund is not a revolving fund for the reason that no provision is made for recovering the money spent from said fund other than the actual cost of poison furnished land owners, but that this is simply a special provision for the raising of a specific fund and as the law does not provide that said tax may be levied annually, there is no way of keeping the fund alive and when the fund created has been exhausted the county commissioners are not authorized to again create a gopher destruction fund but may proceed to expend money from the general fund as heretofore mentioned.

In answer to your fourth question, section 4498 provides in part as follows:

“The board of county commissioners of any county in this state may create a gopher extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one mill on the dollar of assessed valuation upon all horticultural, farming and grazing lands in such county,
* * *.”

While section 1999 R. C. M. 1921 provides that “for the purpose of taxation the taxable property in this state shall be classified as follows: * * *”. And the property on which the tax in question is levied is placed in Class 4. And section 2000 R. C. M. 1921 provides “the basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows: * * * Class 4. Thirty per cent of its true and full value.”

It is at once apparent that section 4498 and sections 1999 and 2000 are in direct conflict and it is a general rule of construction that where two statutes dealing with the same subject are in direct conflict the later enactment must prevail, and as sections 1999 and 2000 are the later enactments, it is my opinion that section 4498, insofar as it provides for the levy on the assessed valuation, has been superseded by these sections, and therefore the one mill levy would be on 30% of its true and full valuation.

Very truly yours,

L. A. FOOT,
Attorney General.