Gophers—Gopher Destruction Fund—Taxation.

Where gopher destruction fund is created as provided for in section 4498, R.C.M. 1921 no tax is levied against land with reference to which it is used.

G. M. Robertson, Esq., October 24, 1930.
State Examiner,
Helena, Montana.

My dear Mr. Robertson:

You have submitted to this office a letter from H. F. Miller, county attorney, in which he inquires what procedure should be followed in order to place the cost of exterminating gophers as a tax against lands when the county commissioners choose to create an extermination fund under Section 4498 for that purpose.

In an opinion rendered by this office in 1927, found in Volume 12, Page 99, it was in effect held that where the county creates an extermination fund no provision is made for the levying of a tax against the lands with reference to which the fund is used. In the first line of the third paragraph the word "raise" is used, which somewhat tends to infer that the tax provisions of the law do not apply when the fund is raised by the one mill levy provided for in Section 4498, but that the tax provisions would apply if the fund was created by appropriation from the general fund. The word "raise" was inaptly used as appears from the context of the whole opinion. Had the word "create" been used in lieu thereof as it should have been this inference would not have been possible. It was the purpose of the opinion to say that where the fund was provided in either of the methods mentioned in Section 4498, that is, by the levy of a one-mill tax or by appropriation from the

general fund, the provisions for the spreading of a tax against the lands do not apply.

It is only when the cost of exterminating gophers is paid from the general fund that these taxing provisions apply; therefore, if the county commissioners choose to create an extermination fund by appropriation from the general fund and the cost of extermination is paid from this fund no tax is authorized to be spread against the lands with respect to which the fund is used.

Very truly yours,

L. A. FOOT,
Attorney General.