

Appropriations — Legislature — Purchasing Agent's Department—Three Mill Levy—Chapter 138, Laws 1929—General Fund—Gasoline Tax.

Right of legislature to appropriate for purchasing agent's department out of the three mill levy authorized by chapter 138, laws of 1929, and approved by the people, is probably lawful though doubtful. It may appropriate out of the gasoline funds and the general fund for said purposes.

Senate Committee on Finance and Claims,
Helena, Montana.

February 18, 1931.

Gentlemen:

You have requested my opinion whether the legislature in making appropriations for the state purchasing agent's department, can make such appropriations out of the three mill levy authorized by chapter 138, laws of 1929, approved by the people at the last general election, the general fund and the funds derived from the 5c gasoline tax.

It is the theory of the committee that there should be appropriated out of the three mill levy 17.68% of the amount required to be appropriated for the purchasing agent's department as that is the percentage that the purchases made for the institutions for which said three mills are levied bears to the total purchases made by the purchasing agent during the fiscal year ending July 1, 1930; that 44.12% of the appropriation should be made from the general fund because that is the percentage of all the purchases made by the state agent during said year that is represented by purchases made for institutions and departments which are supported out of the general fund, and that 38.20% of the appropriation should be made out of the 5c gasoline tax for the reason that that is the percent of all of the purchases made by the purchasing agent during said fiscal year that is represented by purchases made for and on behalf of the highway commission.

Said chapter 138 specifically provides that the additional levy of three mills is for the support, maintenance and improvement of the units composing the university of Montana, the agricultural experiment stations and extension service. The office of the state purchasing agent is not a part of any of the beneficiaries of the three mill levy mentioned in said chapter 138. The purchasing department is wholly independent from these beneficiaries and, in my opinion, it cannot be said that if any part of the three mill levy was appropriated for the operation and maintenance of the purchasing department such appropriation would be for the support or maintenance of the institutions mentioned in said chapter 138. While the purchasing agent does render some service to these institutions, nevertheless, that service is performed as an independent department and not as a part of the institutions themselves.

The attorney general, the state auditor and the state treasurer render some services for said institutions but these services could not be held to constitute any one of these departments a part of the institutions, and I do not believe that under said chapter any part of the three mill levy could be appropriated to the purchasing department because of the service it renders these institutions than could part of said levy be appropriated to the above mentioned departments for and on account of the services rendered by them.

The above conclusion is arrived at upon the theory that the legislature in making appropriations out of the three mill levy intends to follow the direction contained in said chapter 138. Whether the legislature is bound to follow the direction that the moneys derived from the three mill levy shall be appropriated only for the support, maintenance and improvement of the institutions mentioned in said chapter is a debatable question. Apparently the question was before the supreme court of this state in the case of *State ex rel. Jones vs. Erickson*, 75 Mont. 429, but the court did not find it necessary to pass upon it. In bond issue cases the purpose for which the bonds are to be issued is an essential part of the question submitted to the electors and the funds derived from the bonds cannot be used for any other purpose than that for which it was authorized by the electors, the theory being that the electors might be willing to issue bonds for certain purposes but unwilling to issue them for other purposes and that the authority to expend the moneys received from the bonds is limited to the purposes for which they were voted.

On like analogy, it might be said that the people when they authorized the three mill levy by the approval of said chapter 138 were willing to authorize the levy for the purposes mentioned in the act but might have been unwilling to authorize it for some other purpose. If this theory is applicable, then, of course, the legislature could not use the funds for purposes other than as stated in said chapter 138.

On the other hand, section 9 of article XII of the constitution, which required this three mill levy to be authorized by the people before it could be made, does not require the question submitted to the people to contain the specific purposes for which the money may be expended. The limitation on the legislature is upon the levy of taxes and not upon the expenditure of the moneys received from the levy, and the only

question which was required to be submitted to the people was the proposition of increasing the levy to a specified rate and the time during which the rate is to be levied.

It will be observed that the purpose for which the increased rate is to be levied is not required to be submitted to the electors under the constitution other than for general state purposes. What is to be done with the money after the levy has been authorized apparently was by the constitution left to the legislature. On this theory the direction in chapter 138 that the legislature is required to use the moneys only for the purposes mentioned in the act would be in the nature of a restraint upon the legislature to make appropriations out of the taxes after they were levied, whereas, no such restraint appears in the constitution and the legislature would not be restrained by the said chapter from appropriating the money for other purposes.

Which of the above two theories would be held to be applicable to the question is highly debatable and, of course, cannot be definitely answered except by the courts. I am inclined toward the latter view.

Of course, there is no objection to making appropriations for the purchasing department out of the general fund.

As to making any part of the appropriation for the purchasing department out of the 5c gasoline tax, it is my opinion that the legislature is at liberty to do so. This tax is subject to the will of the legislature and can be used for whatever purposes it sees fit to use it for. Of course, house bill No. 1 has attempted to pledge or appropriate sufficient of this fund to meet the interest on debentures which would be issued during the next two years. The case involving the validity of this bill is now in the supreme court but in any event, in my opinion, that bill would not prevent using moneys not required for this interest during the next two years from being appropriated for other purposes.

Very truly yours,

L. A. FOOT,
Attorney General.