

**Opinion No. 163.****County Commissioners—Taxation—  
Levy, Special for Water Project  
—Water Conservation.**

HELD: County Commissioners have no power to make a county-wide special tax levy for the purpose of purchasing equipment and material to be used in assisting in completing a water conservation project.

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September 3, 1935.

Mr. F. V. Watts  
County Attorney  
Roundup, Montana

I am in receipt of your letter of recent date requesting an opinion of the following statement of facts:

“Can the County Commissioners of Musselshell County, Montana, make a county-wide special tax levy for the purpose of raising funds to be used in purchasing equipment and material only, such equipment and material to be used in assisting in completing the Dead Man Basin Water Project, such project being located in Wheatland and Golden Valley Counties, Montana.”

In the case of *Ainsworth v. McKay*, 55 Mont. 270, relative to the powers and duties of the Board of County Commissioners, the court held at page 273 that: “The Board of County Commissioners is an especially constructed tribunal, possessing only such authority as is conferred upon it expressly and such additional authority as is necessarily implied from that which is granted expressly.”

Our Supreme Court enlarged upon the application of this rule, in *Stange v. Esval et al*, 67 Montana 301, by holding in reference to a Board of County Commissioners (p. 305): "It is a body of limited powers and must in every instance justify its action by reference to the provision of law defining and limiting these powers." The Court further held that: "If the Board makes a contract that the law does not empower it to enter into, the contract is without validity and void."

The Court in the case of the *Yellowstone Packing Company, et al. v. Hays*, 83 Montana 1, in defining the powers of a county pronounced the rule: "Aside from powers expressly conferred by statute and those of necessity implied, it possesses none, and where a reasonable doubt exists as to the existence of a particular power, it must be resolved against it." This case further held, that: "Necessarily the same rule applies to the Boards of County Commissioners of counties."

Since the power you inquire of must unquestionably be specifically granted by express statute, it is necessary to examine the governing statutory provisions. Section 4465, R. C. M. 1921, as amended by Chapter 100, Laws of 1931, enumerates the general powers of Boards of County Commissioners. Subdivision 4 of said Chapter 100, *supra*, provides a method of procedure in cases of constructing and maintaining highways, ferries and bridges in conjunction with the Federal, State or other county governments. This section specifically enumerates: "highways, ferries and bridges" and would not apply to this case.

Chapter 87, Laws of 1935, provides in part: "No contract shall be entered into by a Board of County Commissioners for the purchase of any automobile, truck or other vehicle or road machinery or other machinery apparatus, appliances or equipment, materials or supplies of any kind \* \* \* provided, however, that this Act shall not apply to contracts for projects which in the opinion of the Board are made necessary by fire, flood, explosion, storm, earthquake or other elements, epidemics, riots, insurrection or for the immediate preservation of

order or of the public health or for the restoration of the condition of usefulness which has been destroyed by accident, wear or tear, mischief, or for the relief of a stricken community overtaken by calamity."

The only exception in this section that may be related to the case in point would be: "or for the relief of a stricken community overtaken by calamity." The term "calamity" has been construed in various jurisdictions as a happening sudden and unexpected and the case in question would not come within the purview of this definition.

The only method for the county to assist in this matter might be afforded in subdivision 28 of Chapter 100 of the Laws of 1931, providing in part: "To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had \* \* \*." This statute would not apply in any case, except where machinery or equipment is under the supervision of the Board of County Commissioners and in any event the procedure set forth in this section would have to be strictly followed.

It is my opinion that the county commissioners of your county cannot levy the tax proposed in your interrogatory.