

Opinion No. 126.

**Taxation—County Commissioners.
Poor Fund—Welfare.**

HELD: It is mandatory upon County Commissioners to make a six mill levy under Chapter 82, Laws 1937, for the Poor Fund.

July 29, 1937.

Mr. W. A. Brown
State Examiner
The Capitol

My Dear Mr. Brown:

Attention of Mr. A. M. Johnson.

You have submitted to this office the question as to whether or not the six mill levy, under Chapter 82 of the 1937 Session Laws, for the poor fund, is mandatory upon all the counties, and whether or not in the event there was a cash surplus in the poor fund, and a three mill levy would suffice for this year, that would alter the situation.

Section XI, subdivision (b) of Part I of Chapter 82, page 162, of said session laws, provides:

"It is hereby made the duty of the board of county commissioners in each county to levy the six mills required by law for the poor fund and to budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to meet its proportionate share of such assistance granted in the county, and the county budget shall make provision therefor and an account shall be established for such purpose. If the six mill levy shall prove inadequate to meet the county's proportionate share of public assistance under any part of this act and if the county board of commissioners is unable to declare an emergency for the purpose of providing additional funds, and if an audit by the state examiner's office proves this condition to be true and the county board has expended its poor fund only for the purposes levied, then such proportion of its public assistance as the county is unable to meet shall be paid from the state public welfare fund."

The above quoted language is very explicit and precise, and it is mandatory, by virtue of said language, for the county commissioners in each county to levy the six mills required by law for the poor fund. It will be observed in the provision above quoted that it was even contemplated that many of the counties would not exhaust the entire amount of the said six mill levy, and it was contemplated that there might be times when counties would have a surplus in this fund, for we have the following language, "and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to meet its proportionate share of such assistance granted in the county." It may be noted herein that Chapter 82 was approved March 4, 1937, and that Chapter 98, relating to the general county budget, was approved March 12, 1937, a few days after the approval of Chapter 82. Among other provisions, Chapter 98 of the 1937 Session Laws provides:

"The board shall then determine and fix the amount to be raised for

each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year: provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, and additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund."

It may be urged that Chapter 98 justifies and authorizes the board of county commissioners to impose a levy of less than six mills in the poor fund, where the poor fund has a surplus, or where at the time of making the budget, as far as can be foreseen, is not fully needed. Where a general statute is repugnant, inconsistent, or in conflict with a special statute, the special statute will prevail, and, this rule

is followed even though the general statute was a later enactment, and a later act, of the legislature than the special statute.

State v. Certain Intoxicating Liquors, 71 Mont. 79, says:

"Where the last statute is complete in itself, and intended to prescribe the only rule to be observed, it will not be modified by the displaced legislation, as laws in *pari materia*." (Lewis' Sutherland on Statutory Construction, 2d ed., sec. 447.)

Chapter 82 is complete in itself, and it deals with a special and particular subject, and Chapter 98 deals with a general subject and does not treat of any particular part of a subject in detail.

"Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling, and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage. It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication. Other statements in regard to the construction of general and special statutes relating to the same subject matter are, that a special statute should not

be construed as an exception to a general law, unless the two acts cannot otherwise be reconciled; that the functioning of public institutions of the state, operating under special statutes, is not generally affected by general restrictive laws governing the revenue collecting bureaus of the state, that when a general act has established a system of law covering a vital field in government, an exception to such general system will not readily be implied, and that where it is sought to show that provisions of a general law do not apply to a city adopting it in its entirety, and that provisions of the special charter apply, language relied on to express such intent should be reasonably plain." (59 C. J. 1056.)

"In construing a general statute, the court should interpret it so as in a conflict with a lower special statute it could stand independently for useful purposes."

(People ex rel N. Y. v. Wilcox, 94 N. E. 212.)

We are not unmindful of the fact that it is the duty of the board of county commissioners to establish a tax levy as low as possible, and we shall urge the board of county commissioners to so do, but the fact that the board of county commissioners carries out the plain mandate of the law and makes a six mill levy for the poor fund does not mean that the taxes of the county shall be increased, nor the levy raised. The statute provides that surplus moneys may be transferred from one fund to another where there is a deficit, and if the board of county commissioners finds a surplus in the poor fund, it may transfer that to another fund wherein there is a deficit, or, for that matter, it could lower the levy in another fund and create a deficit there and transfer to that fund the surplus of the poor fund, and in that manner the total levy would not be increased, nor the total taxes collected be increased. The purpose of requiring a six mill levy is to make sure that there will be ample funds to meet any possible contingency, such as drought, or depressed economic conditions, necessitating an unusual burden upon the poor fund which cannot be foreseen. In the event the county did not levy the six mill levy for the poor fund, although it appeared at the time of

making the levy that there were ample reserves, and it later developed that the levy so made was insufficient, it would then be impossible under Chapter 82 for the state to come to the county's aid, and in that event there would be cases in the county which would not have the benefits of the law.

Section II of Act 271, of the Seventy-fourth Congress, provides that the State Plan for Old Age Assistance shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them. The Federal Act will approve of any plan which meets the conditions of the federal requirements, and if some particular county was unable to fulfill the requirements, and had arbitrarily placed itself in such a position, we believe that it would be within the authority of the Federal Government to withdraw all federal aid from the state. The mere failure of one county to make the six mill levy might thus jeopardize the relief act.

Therefore, it is my opinion that the six mill levy for the poor fund, as provided for in Chapter 82, is mandatory.