

3. Levy in anticipation of authorization cannot be made.

August 8, 1939.

Mr. Frank T. Hooks
County Attorney
Townsend, Montana

Dear Mr. Hooks:

You have submitted to this office for my opinion the following questions:

"When may the board of county commissioners make a special levy under the provisions of Chapter 85, Laws of 1937, as amended by Chapter 209, Laws of 1939?

"May a levy be made under the provisions of said chapters by each political subdivision, where the boundaries interlap and are contained within the others, resulting in an annual and total tax levy for the subdivisions collectively, exceeding the maximum levy provided by Section 4 of Chapter 85 for each subdivision thereof."

Section 2 of Chapter 85 authorizes the board of county commissioners in cooperation with any federal agency in the construction, operation and maintenance of any projects sponsored by the county, to expend money to furnish materials, equipment, rentals, supplies, and supervision. When sufficient funds are not otherwise available warrants designated as relief warrants may be issued to defray such expenditures.

Section 3 of Chapter 85 provides that the moneys collected and payable into an emergency relief fund shall be used for no other purpose than to redeem said warrants. Warrants may be issued in anticipation of the receipt of moneys to be derived under a special levy, as provided for in Section 4 of the act. A project cannot be authorized or warrants issued if a petition containing as many as 10% of the qualified electors voting at the last general election opposing the same be filed. Chapter 85 does not authorize the board of county commissioners to make a special levy unless a project is being sponsored and has been duly authorized in the manner therein provided and then only in the event suf-

Opinion No. 112.

**Taxation—Levy—Emergency
Warrants.**

HELD: 1. Under Chapter 85, Laws, 1937, as extended by Chap. 209, Laws, 1939, each political subdivision may independently and separately levy the tax as provided therein.

2. Levy cannot be made unless project is sponsored and has been authorized in the manner as provided in said Chapter 85.

ficient funds are not available. The mere fact that the electors, by a sufficient petition opposing the project may veto the action of the board, indicates that it was never the intention of the legislature that a special levy be made prior to the authorization of the project. A levy cannot be made upon the contingency that an authorization for a project may be made. The authorization must be final and complete. The laws prohibits the levying and collection of such tax until the use of the money is needed.

Rogge v. Petroleum County, 107 Mont. 37;

61 C. J. 557;

Kraus v. Riley et al., 107 Mont. 116.

Section 4 of Chapter 85 authorizes the governing body of the state, county, school district or municipal corporation to levy an annual tax not to exceed one-half of one percentum of the taxable value upon which taxes are levied and collected within the political subdivision, provided that the total levy of such subdivision does not exceed one percentum of the taxable value thereof. This provision authorizes each subdivision to make a special levy although the total levy of the subdivisions collectively may exceed one-half of one percentum of the annual levy and one percentum of the total levy of the taxable property. In other words, the county may levy an annual tax of one-half of one percentum of the taxable value of its property. The school district and the municipal corporation each and at the same time may levy a like amount although their boundaries may overlap and are contained within the county's. The statute having expressly authorized the tax to be levied upon the property of each subdivision, it necessarily follows that the tax levies or maximums fixed therein apply to each political subdivision separately and not to the subdivisions collectively.