

Opinion No. 253.

**Taxation—Levy, When Made, Chapter
85, Laws of 1937, Chapter 209,
Laws of 1939.**

HELD: 1. The tax levy provided for under Chapter 85, Laws of 1937, as extended by Chapter 209, Laws of 1939, may only be made after authorization for expenditure has been obtained as provided therein.

2. Each political subdivision may separately and independently levy the maximum provided under said chap-

ters, even though the property affected by the levy overlaps.

3. The maximum levy of $\frac{1}{2}$ per cent may be made for each year during the life of the Act, as amended.

4. The levy should, if possible, be made at the same time as other levies for the county are made, but may be made at any time, even after the expiration date of the Act, March 15, 1941.

September 3, 1940.

Mr. I. M. Brandjord, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Brandjord:

Since my opinion to you dated July 30, 1940, I have given the third question of your request further study and consideration. As a result, that opinion is modified and withdrawn and the following substituted.

Opinion No. 112, Vol. 18, Official Opinions of the Attorney General, dated August 8, 1939, answers your first and fourth questions and holds that each political subdivision may independently and separately levy the tax as provided under Chapter 85, Laws of 1937 (See also State ex rel Siegfriedt, 108 Mont. 510); that the levy cannot be made unless the project or projects are sponsored and have been authorized in the manner as provided by said Chapter 85; and that the levy cannot be made in anticipation of authorization and sponsorship of a project.

As to question No. 2, "When may this levy be made?" I find no statute which prohibits the levy from being made at any time. Section 2150, Revised Codes of Montana, 1935, provides that the county commissioners must make the annual levy for county purposes on the second Monday in August. This provision is undoubtedly for the purpose of permitting sufficient time for the treasurer to compute the taxes and extend the same on the tax rolls. In the absence of any prohibiting statute, it would seem that a levy may be made at any time. However, it seems only reasonable that for convenience and orderly dispatch of the county business in regard to levying and collecting of taxes, the levy should be made so as to give the treasurer an opportunity to compute

the tax and extend the same before tax notices are sent out.

The benefits of Chapter 85, as extended by Chapter 209, Laws of 1939, expire on March 15, 1941. The question would then arise, can the levy be made after March 15, 1941?

Our Supreme Court in the case of *Krause v. Riley, et al.*, reported in 107 Mont. at page 116, in passing on this question in connection with Chapter 85, Laws of 1937, held (see page 120):

"When relief warrants are issued they become an obligation of the political subdivision issuing the same, and it cannot be said that the legislature intended by the Act limiting its effective date to March 15, 1939, to impair the obligation of the political subdivision to pay them, contrary to the express mandate of the Constitution. (Art. III, Sec. II.) Reasonable construction of Chapter 85 impels the conclusion that it should not exist after March 15, 1939, as authority for the creation of further obligations, but that any obligations already incurred and for which warrants had been issued would still remain as obligations of the political subdivision and that there still would be authority in such subdivision to levy taxes in order to discharge the obligation."

Chapter 85, as expressed in Section I of the Act, was an emergency measure designed to permit political subdivisions to take "advantage of all available federal, state and other funds promptly to the end that employment of Montana citizens may be augmented to the greatest possible degree, that all federal funds may be used, and that citizens of this state may be removed from public relief rolls and be given gainful employment." It was specifically provided by the Act (Section 7) that the beneficial provisions thereof should not extend beyond March 15, 1939.

When the legislature met in its session of 1939 it enacted Chapter 209. The title to this Act reads, "An Act to Amend Section 7 of Chapter 85, Laws of the Twenty-fifth Legislative Assembly, 1937, Relating to Continuance of an Emergency and Continuing in Force the Provisions of Said Chapter 85." This legislative assembly specifically recognized a "continuing emer-

gency," and obviously intended to continue the benefits provided by Chapter 85. The most important benefit of Chapter 85 was the authority granted political subdivisions to levy each year of the life of the Act a tax of 5 mills, or a total of 10 mills for the two-year period. By extending the life of the Act for a further two-year period because of a "continuing emergency," it is obvious that the intention was to continue the authority to levy an additional 5 mills in each year of the extended period. There could be no other purpose in extending the life of the Act.

It is, therefore, my opinion that the effect of Chapter 209, Laws of 1939, is to extend the provisions of Chapter 85 until March 15, 1941, including the authority to levy annually an additional tax of $\frac{1}{2}\%$.