

No. 166

**AIRPORTS—LANDING FIELDS—COUNTIES—CITIES—
TOWNS—TAX LEVY—JOINT VENTURE**

Held: Where county and city join in establishing, etc., an airport and landing field as joint venture, county may assess and levy tax up to $\frac{1}{2}$ mill under Section 4444.3, Revised Codes of Montana, 1935; city may assess and levy up to one mill under Chapter 54, Laws of 1941, Section 4.

July 10, 1941.

Mr. Oscar C. Hauge
County Attorney
Hill County
Havre, Montana

Dear Mr. Hauge:

You have submitted the following question:

“Under Section 5668.38, Revised Codes of Montana, 1935, as amended by Chapter 54, Laws of 1941, where a county and a city are

acting jointly in the establishing of an airport and landing field, what is the maximum levy that the county may make and that the city may make?"

Section 5668.38, Revised Codes of Montana, 1935, as amended by Section 4, Chapter 54, Laws of 1941, is as follows:

"For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes, a tax of not to exceed one (1) mill on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the taxpayers affected thereby, and a majority vote be cast therefor."

In construing this section, it is well to read the whole chapter. The act provides any county, city or town in the state, either individually, or by joint action of a county and one or more cities and towns within the county, may acquire, establish, construct, equip, maintain and operate airports and landing fields, acting through the board of county commissioners and the city councils and/or town councils.

Section 5668.38, as above set forth, was evidently intended to cover any project undertaken, whether individually by a county alone or a city alone, or by a county and a city or cities and/or towns. For that reason, the word "or" was used instead of the word "and." However, to carry out the intent of the legislature, the courts have consistently held the word "or" means "and." (State v. Cooney, 70 Mont. 355, 225 Pac. 1007, 1014; State ex rel. Williams v. Kamp, 106 Mont. 444, 78 Pac. (2nd) 585, 588.)

It is apparent the legislature intended that, in a joint venture between the county and a city or cities, or town or towns, in establishing, constructing, equipping and operating airports and landing fields, each such subdivision participating could levy a tax each year of not to exceed one mill on the dollar of taxable value of the property of such county, city or town participating.

However, the said act did not amend Section 4444.3, Revised Codes of Montana, 1935, which is as follows:

"County may contract for airport—levy of taxes. That any county of this state is hereby authorized and empowered to enter into a contract upon such terms and conditions as it may deem proper, with any incorporated city or town within the limits of said county, to equip, maintain, or improve any municipal airport or landing field owned and operated as such by said city or town, or to purchase, equip, maintain and improve jointly with any such city or town, an airport or landing field; provided, however, that the amount of money that may be so appropriated by said county shall not exceed in any one (1) year, a sum in excess of an amount equal to one-half ($\frac{1}{2}$) mill levy on the taxable value of all property for tax purposes within said county, for the year in which said appropriation is made."

Therefore, it must be considered the legislature overlooked Section 4444.3, Revised Codes of Montana, 1935, in enacting Chapter 54, Laws of 1941, and by so doing, of course, Section 4444.3 is still in full force and effect. Further, it must be observed there is no repealing clause in the 1941 Act.

“Statutes which are not inconsistent with one another, and which relate to same subject matter, are in *pari materia*, and should be construed together.”

Register Life Ins. Co. v. Kenniston, 99 Mont. 191, 43 Pac. (2nd) 251.

“Statutes which are *pari materia* must be construed together, all parts thereof being given effect if possible.”

Box v. Duncan, 98 Mont. 216, 38 Pac. (2nd) 986.

“In construing of statute, all Acts relating to same subject or having same general purpose should be read with it.”

Putman v. Putman, 86 Mont. 135, 282 Pac. 855.

Therefore, it is my opinion that a county—joining with a city in a joint venture in establishing, constructing, equipping, maintaining and operating an airport and landing field—may, through its board of county commissioners, each year assess and levy, in addition to the annual levy for general administrative purposes and within the constitutional limitations, a tax of not to exceed one-half mill on the dollar of taxable value of the property of said county. A city, through its council, joining with a county for the above purpose, may—if the council so determines—each year assess and levy, in addition to the annual levy for general administrative purposes and within the constitutional limitations, a tax of not to exceed one mill on the dollar of taxable value of the property of said city.

Sincerely yours,

JOHN W. BONNER
Attorney General