

No. 189

**CITIES AND TOWNS—COUNTIES—WPA PROJECTS,
Sponsoring of—TAXATION, Levy for**

- Held: 1. A city may not levy a tax under the provisions of Section 1 of Chapter 143, Laws of 1941, unless the project was actually sponsored and under construction prior to March 15, 1941.
2. A city may not levy in excess of three mills on the taxable valuation of the taxable property situated within said city.
3. The total levy made by a county and a city on property situated within the city may not exceed five (5) mills.

July 28, 1941.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have requested an opinion on the following statement of facts:

"The town of Sheridan, Montana, in the fall of 1940 was interested in sponsoring a W.P.A. street improvement program and securing some of the \$100,000.00 allotment allowed by the Federal Government for Montana. The city council directed the mayor to make the necessary arrangements to secure the W.P.A. project. Accordingly the

mayor contacted the county commissioners of this county and was assured that the town would get a project for street improvement. Accordingly the mayor contacted a private engineer to draw-up plans for the street improvements and planned on levying a five mill tax to pay for the same. The above negotiations were conducted orally and, I am informed, no formal resolution was adopted formerly sponsoring a W.P.A. project.

"1. Can a city council now levy a tax not exceeding five mills on the taxable property within said town on the idea that said project was sponsored prior to March 15th, 1941?"

"2. Is it necessary under the above facts that the WPA project be actually under construction as well as arrangements made for its sponsorship before March 15th, 1941, to be able to levy a five mill tax to pay for expense of the same? Will the fact that arrangements were made for the sponsorship of this project be sufficient to allow the five mill levy to be made?"

"3. Can the city council issue anticipatory warrants to complete paying for the project at the present time, such warrants to be paid from next year's levy?"

Section 1 of Chapter 143, Laws of 1941, provides:

"In order to complete sewing projects and any project under construction by any federal agency, and sponsored prior to March 15, 1941 by any county, city, town or school district, such county, city, town or school district may furnish such materials, equipment, rentals, supplies and supervision therefor as may be necessary to complete the same, and when no funds or not sufficient funds are available to pay for such materials, equipment, rentals, supplies or supervision, may issue relief fund warrants therefor, in the amount and in the manner hereinafter provided."

It will be noted this section authorizes the levy for "any project under construction by any federal agency, and sponsored prior to March 15, 1941. . . ." (Emphasis mine.)

Chapter 143 of the Laws of 1941 deals with two situations, viz: (1) projects actually sponsored and under construction prior to March 15, 1941, the date Chapter 85, Laws of 1937, as amended by Chapter 209, Laws of 1939, expired; and (2) projects to be sponsored and constructed between July 1, 1941, and June 30, 1942.

Under the facts given, the project in question was neither sponsored nor under construction prior to March 15, 1941. Therefore, the city may not now levy the tax provided by said Chapter 143 for this project under Section 1 of the act.

However, the city may now sponsor the project under Section 2 of the act by complying with all the other provisions regarding passing of resolution, publishing the same, etc. The tax may be levied at any time subsequent to the sponsoring thereof. (See *Kraus vs. Riley*, 107 Mont. 116, 120, 80 Pac. (2nd) 864; Opinion No. 253, Volume 18, Official Report and Opinions of Attorney General.)

It may be well to point out here that, under the provisions of Section 5 of the act, each political subdivision may levy not to exceed three (3) mills on the taxable valuation of the taxable property situated within such subdivision. Therefore, a city sponsoring a project may not levy in excess of three (3) mills on the taxable valuation of the taxable property situated within such city.

If a county sponsors a project and makes a levy upon property within any city, and the city also sponsors a project and makes a levy upon the property situated within the city, the total of both levies cannot exceed five (5) mills.

It is therefore my opinion:

1. A city may not levy a tax under the provisions of Section 1 of

Chapter 143, Laws of 1941, unless the project was actually **sponsored and under construction** prior to March 15, 1941.

2. A city may not levy in excess of three (3) mills on the taxable valuation of the taxable property situated within said city for projects sponsored subsequent to July 1, 1941.
3. The total levy made by a county and a city on property situated within the city may not exceed five (5) mills for projects sponsored subsequent to July 1, 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General