

No. 198

TAXATION—LEVY, When Made

Held: The levy provided for by Chapter 143, Laws of 1941, may be made at any time after the project has been sponsored, as therein provided, and the sponsoring body has been authorized to incur the indebtedness and levy the tax.

August 6, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

I have your letter of August 2, 1941, enclosing a copy of your opinion of the same date, rendered to the County Commissioners of Silver Bow County, relative to levy of taxes under the provision of Chapter 143, Laws of 1941, on which you request my views.

Your opinion holds the levy provided under Section 1 of the act, that is, for projects sponsored and under construction prior to March 15, 1941, may be made in August of this year at the time other county levies are made, but such levy, authorized under Section 2 of the Act, that is, for projects sponsored after July 1, 1941, and prior to June 30, 1942, may not be levied until after the project has been sponsored in accordance with the provisions of Section 4 of the act. We agree with this opinion.

Chapter 143 was designed to cover two situations: Projects sponsored and under construction prior to March 15, 1941, the expiration date of Chapter 85, Laws of 1937, as extended by Chapter 209, Laws of 1939, and those projects sponsored between July 1, 1941, and June 30, 1942.

With reference to projects sponsored and under construction prior to March 15, 1941, Section 5 of Chapter 143, Laws of 1941, provides:

“For the purpose of providing funds for the payment of emergency relief warrants, issued in payment of materials, equipment, rentals,

supplies and supervision furnished . . . the county, city, town or school district sponsoring such project may levy a tax . . ." (Emphasis mine)

And with reference to projects sponsored between July 1 and June 30, 1942, the section provides:

" . . . And for the purpose of providing funds for the payment of emergency relief warrants **which may be issued** . . . the county . . . may levy a tax . . ." (Emphasis mine.)

Under this language it is clear the legislature recognized the fact that, as soon as the project was sponsored in the manner provided by the act (Section 4), the obligation was incurred and the body sponsoring was authorized to levy the tax thereafter in order to pay such obligation.

The question when the levy may be made was considered by this office in connection with similar provisions found in Chapter 85, Laws of 1937, and it was there said,

" '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." (See Opinion No. 253, Volume 18, Report and Official Opinions of Attorney General.)

Therefore, after the commissioners have been authorized to incur the indebtedness, as provided in Section 4 of the act, they may thereafter levy the tax to provide funds for payment of the warrants issued or to be issued.

If the body sponsoring a project under the provisions of Section 2 of the act has complied with the requirements of Section 4 and is authorized to create the indebtedness prior to the regular tax levying period, to-wit, the second Monday in August, there is no reason why it should not make the levy at this time. In the resolution required to be published, the sponsoring body is required to set forth the approximate amount of the tax levy which will be made in order to pay all emergency warrants with interest thereon issued in payment thereof. By failure to file a protest within the time provided by the act, the electors have consented to the incurring of the amount of indebtedness and the tax levy set forth in the resolution. In fact, by making such levy at this time, the body sponsoring a project will receive the funds in November and thus will be enabled to take up all warrants then issued and thereby save interest. The act itself does not provide when such levy may be made. It is only reasonable, however, to assume the levy may only be made after the obligation is incurred. But when the obligation has once been incurred, the levy may be made at any time thereafter, even after the expiration date of the act. (See *Krause v. Riley*, 107 Mont. 116, 80 Pac. (2nd) 864.)

It is therefore my opinion the levy provided for in Chapter 143, Laws of 1941, may be made at any time after the project has been sponsored, as therein provided, and the sponsoring body has been authorized to incur the indebtedness and levy the tax.

Sincerely yours,

JOHN W. BONNER
Attorney General