

## No. 345

**POOR PER CAPITA TAX—TAXATION—BUDGET,  
county—EXPENDITURE OF PER CAPITA POOR  
TAX**

- Held: 1. The proceeds from the per capita poor tax levied under Section 4465.4, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941, when and as collected must be deposited to the credit of the poor fund.
2. In making up the county budget, the estimated proceeds from a per capita poor tax to be levied in December may be taken into consideration and included therein.
3. Unless included in the budget estimate, proceeds from the per capita poor tax may not be expended during the current fiscal year, but must be carried as a balance at the end of the fiscal year.
4. Proceeds from the per capita poor tax levied in December may be used to retire legally issued registered warrants against the poor fund during such fiscal year.

January 23, 1942.

Mr. W. A. Brown  
State Examiner  
Capitol Building  
Helena, Montana  
Attention: Mr. S. L. Kleve, Chief Examiner

Dear Mr. Brown:

You have inquired of this office as follows:

"The Board of County Commissioners have made a special per capita tax under this act. My understanding is that the monies derived from this levy would be placed directly into the Poor Fund and be expendable under expenditures authorized by the 1941-1942 budget. However, due to the peculiar wording of this act, it occurs to me that there is a possibility that I am in error as to my understanding of the disposition that should be made of the monies collected and that it is possible these monies should be set aside for the 1942-43 budget.

"You will note that, if this is a 1941-42 Special Poor Fund Tax, the peculiar situation is created of collecting a 1941-42 Special Poor Tax and 1942-1943 Personal Property Tax on the same assessment levy.

"Inasmuch as this question will, no doubt, come up in numerous cases, we would appreciate your opinion as to when the proceeds of such tax are to be taken up in the budget accounting."

This tax is authorized under the provisions of Section 4465.4, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941.

It will be noted the per capita tax levied under this act becomes effective "as of January first of the following calendar year," whereas the six mill levy authorized under the same act for the poor fund is levied "at the same time other tax levies are made on property, as provided by law," to-wit, in August. Hence, the six mill levy is made in August and due and payable in November of the same year, while the per capita tax, levied in December of one year, is not effective or payable until January of the following year. This situation, therefore, raises the question whether the proceeds from this per capita poor tax collected in 1942 may be expended for purposes of the poor fund during the fiscal year commencing July first, 1941, and ending June 30, 1942. Proceeds of both tax levies must be deposited to the credit of the poor fund.

In determining this question we must consider the county budget act, Section 4613.1 to 4613.10, Revised Codes of Montana, 1935, inclusive. Sections 4613.1, 4613.2, 4613.3 and 4613.4 set forth the procedure in preparing estimates of necessary expenditures for each county office, submitting the figures to the clerk, preparation of the county budget by the clerk, hearings thereon, and adoption of the final budget by the county commissioners. Section 4613.4, after providing for hearing and final adoption, provides:

“ . . . Said budget as finally adopted shall specify the fund or funds against which warrants may be issued for the expenditures so authorized, respectively and the aggregate of all expenditures authorized against any fund shall not exceed the estimated revenues to accrue to such fund during the current fiscal year from all sources including taxation.

“On the second Monday in August, and after adoption of such final budget, the board of county commissioners shall fix the amount of the tax levy for each fund necessary to raise the amount of estimated expenditures to be made therefrom, as finally determined, less the estimated revenues from sources other than taxation, available surpluses and expenditures that are to be made from bond issues.”

Section 4613.5, Revised Codes of Montana, 1935, insofar as pertinent here, provides:

“The estimates of expenditures, itemized and classified as required in section 4613.2, and as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively; \* \* \* Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer; as herein provided, shall not be a liability of the county, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The board of county commissioners shall not approve any claim, and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for an emergency as hereinafter provided. . . .”

Under the budget procedure, therefore, estimated expenditures for the fiscal year must be determined, and the necessary tax, within statutory limitations, levied prior to the second Monday in August of the fiscal year. The county commissioners and all other officers are limited in expenditures as fixed in the budget and are prohibited from making expenditures in excess thereof. However, in making up the budget I see no legal reason why the estimated revenue from a per capita tax levy to be made in December could not be taken into consideration and included therein. In such event, the proceeds from such levy, when collected, could be expended during the fiscal year.

On the other hand, unless so included in the budget for the present fiscal year, such revenue cannot be expended for the reason such expenditure would exceed the budget set—which is prohibited by Section 4613.5, supra. If not included in the estimated revenue for the fiscal year, the proceeds of such tax, when collected, must be deposited to the credit of the poor fund and remain as a balance on hand at the end of the fiscal year.

If the regular poor fund revenue for the fiscal year becomes exhausted and registered warrants have legally been issued, I see no reason why the proceeds of this tax could not be used to retire such registered war-

rants. Otherwise, these proceeds must be carried as a balance at the end of the fiscal year to be considered in the next fiscal year budget as provided by law.

It is therefore my opinion:

1. The proceeds from the per capita poor tax levied under Section 4465.4, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941, when and as collected must be deposited to the credit of the poor fund.
2. In making up the county budget, the estimated proceeds from a per capita poor tax to be levied in December may be taken into consideration and included therein.
3. Unless included in the budget estimate, proceeds from the per capita poor tax may not be expended during the current fiscal year, but must be carried as a balance at the end of the fiscal year.
4. Proceeds from the per capita poor tax levied in December may be used to retire legally issued registered warrants against the poor fund during such fiscal year.

Sincerely yours,

JOHN W. BONNER  
Attorney General