

No. 430

**COMMISSIONERS OF IRRIGATION DISTRICTS—
LEVIES—INVESTMENT OF EXCESS FUNDS—ADMIN-
ISTRATIVE EXPENSE—MAINTENANCE COSTS AND
REPAIRS—IRRIGATION DISTRICTS**

Held: No authority having been granted to the commissioners of irrigation districts to invest excess funds levied and raised for administrative expenses and maintenance costs, the commissioners may not invest such funds.

June 24, 1942.

Mr. W. A. Brown
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Brown:

You have submitted the following question for my opinion:

An irrigation district has annually levied for the operation and maintenance fund far in excess of the annual costs on said fund, so that a large balance is carried in said fund from year to year in the approximate sum of \$90,000.00 and the fund is being augmented. The annual average costs against said fund are approximately \$55,000.00; at the close of April, 1942, there was credited to this fund the sum of \$100,255.54, with obligations of approximately \$4,000.00. The question arises as to whether the district may invest at least \$10,000.00 of said funds in United States war bonds.

In considering this question we must keep in mind the commissioners of an irrigation district created under the laws of the state have only such authority and powers as the legislature has granted. In other words, the legislature may circumscribe or extend the powers to be exercised by an irrigation district as it sees fit, and "the power to act without authority does not exist."

State ex rel. Bean v. Lyons, et al., 37 Mont. 354, 364, 96 Pac. 922.

An irrigation district—created under state law—is established principally for the purpose of securing an adequate water supply for the lands of the district and the distribution thereof and is declared to be a public corporation for the promotion of the public welfare.

Section 7262, Revised Codes of Montana, 1935, provides:

"The object of this act being to secure the irrigation of lands of the state, and thereby to promote the prosperity and welfare of the people, its provisions shall be liberally construed so as to effect the objects and purposes herein set forth."

Section 7235, Revised Codes of Montana, 1935, grants to the board of commissioners of irrigation districts the power and authority to levy

taxes for the general administrative expenses of the district and also for the purpose of maintenance and repairs, for interest on the principal of outstanding bonded or other indebtedness of the district, including any indebtedness incurred under any contract between the district and the United States, but only under the following restrictions:

The commissioners shall each year, on or before the second Monday in July each year ascertain the total amount required to be raised in that particular year for the general administrative expenses of the district, including the cost of maintenance and repairs, the total for that year for interest on and principal of the outstanding bonded or other indebtedness of the district; and the commissioners shall levy against each forty-acre tract or fractional lot, as designated by the United States public survey or platted lot or tract of land in the district, that portion of the said respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district.

It would appear that, in the district under consideration, the commissioners thereof had each year exceeded their authority in making each year a levy far in excess of "the total amount required to be raised in each year" to meet the expenses of that year chargeable to said fund. The object and purpose of an irrigation district, as the statute above declares, is the irrigation of land; it is not created to build up an investment fund, or created for profit.

This excess levy might well deprive some farm owner of his land, and such levy no doubt works a hardship on many owner taxpayers.

No authority is granted by law to the commissioners to make any such excess levy, but only the total amount necessary for that particular year; and, as the records show, this levy has been far in excess of the required amount for this fund for each of several years.

The legislature never anticipated the commissioners would so exceed their authority. It follows no provision of law grants the commissioners the authority to invest such excess funds.

The desire to invest these excess funds in United States war bonds is a worthy project, but—as our Supreme Court has stated—the fact the contemplated action may be in the best interests of the district is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes.

Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962.

It would appear the balance of funds now on hand are amply sufficient to meet the expenses of the district at least for the next fiscal year. In such event, the commissioners would not now be authorized or justified in making a levy for that year.

It is my opinion that, no authority having been granted to the commissioners of irrigation districts by the legislature to invest excess funds so levied and raised for administrative expenses and maintenance costs, the commissioners may not invest such funds.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General