

No. 501

**TAXATION—COUNTIES—SWIMMING POOL—PARKS—
COUNTY COMMISSIONERS**

Held: No authority having been granted to the commissioners to a county to levy a tax for more than an amount sufficient to defray the current expenses for any one year, a county cannot by a special levy create a fund to be expended in some future year for the construction of a swimming pool.

October 13, 1942.

Mr. Norman R. Barncord
County Attorney
Wheatland County
Harlowton, Montana

Dear Mr. Barncord:

You have submitted to this office the following question:

Can the Board of County Commissioners of Wheatland County make a special levy for successive years and the money realized from the levy be allowed to accumulate over a number of years until there is a sufficient amount to pay for the erection of a swimming pool?

In considering this question we must keep in mind that a county has only such powers as are expressly granted by the legislature; and, if there is a serious doubt about the existence of a power, the power must be denied.

Sullivan v. Big Horn County, 66 Mont. 45, 212 Pac. 1105.

Section 4465.12, Revised Codes of Montana, 1935, provides:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

"To levy such tax annually, on the taxable property of the county for county purposes as may be necessary to defray the current expenses therefor, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills on each dollar of the excess valuation for any one (1) year; and to levy such taxes as are required to be levied by special or local statutes." (Emphasis Mine.)

It is to be noted from this section the taxing power of a county is limited to an annual tax to "defray the current expenses," which would

preclude the accumulation of a fund to be expended in the future. In other words, the commissioners are not authorized to make a levy in excess of that necessary for a particular year.

The purpose for which this levy is proposed is the construction of a swimming pool and this offers another problem for our consideration.

There is no express provision in the statutes for the construction of a swimming pool by a county, but Section 4444.1, Revised Codes of Montana, 1935, provides:

"The several counties of this state are hereby authorized and empowered to acquire by purchase, grant, deed, gift, devise or condemnation, or otherwise, lands in one tract, suitable for public camping and public recreational purposes, or may lease such land tracts, each of which shall be so situated as to offer ready access to a public highway."

The courts have given a liberal interpretation to the use public parks can be put to, and have construed "recreational purposes" to include a great number of outdoor sports. The necessary equipment for sports has always been treated as a proper park improvement.

39 American Jurisprudence 819.

It is apparent a swimming pool would be an appropriate use of at least a portion of a county park.

However, there is an express limitation on the amount which can be expended in the purchase, improvement and maintenance of county parks, and this might well preclude the construction of an expensive pool in a great number of counties.

Section 4444.2, Revised Codes of Montana, 1935.

It is my opinion that, no authority having been granted to the commissioners of a county to levy a tax for more than an amount sufficient to defray the current expenses for any one year, a county cannot—by a special levy—create a fund to be expended in some future year for the construction of a swimming pool.

Sincerely yours,

R. V. BOTTOMLY
Attorney General