

Opinion No. 232.

Cities and Towns—Taxation, Additional Levy—Wages, Firemen and Policemen.

Held: Authority of city council voted by electors in accordance with law to make a levy of taxes in an amount in addition to that provided by law in order to pay an increase in wages of firemen and policemen deemed

necessary because of conditions caused by the prosecution of the war and to preserve the peace, health and safety of the people, may be exercised by the council within its sound discretion, so long as such necessity exists, without resubmission to the electors.

July 29, 1944.

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

Dear Mr. Roe:

You have submitted to me your opinion on the following question:

May the extra levy voted by the taxpayers of the City of Butte on April 5, 1943, for the purpose of increasing the wages of the city firemen and policemen, which levy was made for the year 1943, be levied from year to year without resubmitting the question to the electors?

In your opinion you reach the conclusion that such levy may be made each year, within the discretion of the council without re-submission to the electors.

While it is not within the duties or authority of the Attorney General to render opinions to a city, and the policy of this office for many years has been to refrain from doing so, in view of the fact the question here presented is of much importance and the time in which to decide the question will not permit submission to the courts, I am glad to give you my opinion for whatever it may be worth in aiding the council to arrive at a proper decision.

I have carefully read your opinion and am impressed with the logical reasoning therein. After a careful consideration of the question and study of the statutes involved, the decisions applicable, and the resolution authorizing submission of the question as well as the specific question submitted, I am compelled to agree with you.

As pointed out in your opinion, while the legislature placed a restriction upon the city council in levying taxes upon its inhabitants, no such restriction is placed upon the right of the people to increase their burden

of taxation within the limitation placed by the legislature. The legislature by Section 5194, Revised Codes of Montana, 1935, as amended by Chapter 48, Laws of 1937, restricted the amount of levy for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand or over. But recognizing the fact that conditions might arise when such levy would not be sufficient, the legislature by Section 5195, Revised Codes of Montana, 1935, authorized the city council when the necessity for an increase arose, to submit the question to the electors and obtain authorization to make the increased levy.

It is clear from the resolution authorizing the submission of the question that the city council deemed the necessity for an increase existed. The resolution sets forth clearly that due to the "emergency in which the state and nation are involved in the prosecution of the war," it is immediately necessary for the preservation of peace, health and safety of the people of the city of Butte, that such increase levy be authorized and made. The resolution does not either in express words or by implication disclose that the council contemplated such necessity would exist for only one year, or any definite time, nor does it disclose that the council sought authority for that year only. It clearly states the necessity is caused by the war, and it may safely be implied the necessity will continue at least so long as the war continues.

The question submitted to the electors of the city at the city general election held on the 5th day of April, 1943, as follows:

"Shall the City Council of the City of Butte, be authorized to make a levy of two mills taxes in addition to the regular levy now authorized by law for general municipal or administrative purposes, for the purpose of raising and increasing the pay or wages of the members of the fire department and police department of the City of Butte in the amount of One (\$1.00) Dollar per day?"

is clear and unambiguous and clearly informed the electors that the council was asking for authority to levy two mills in addition to the levy then au-

thorized for the purpose of raising and increasing the wages of the firemen and policemen. The question did not restrict the levy to one year. Therefore, the electors, when they voted to authorize the additional levy for the purpose stated were fully informed as to the purpose and when they gave their consent to the council to make the additional levy, they did not restrict such authority to one year, but left it to the discretion of the council to make the levy so long as the necessity therefor existed.

Therefore, I agree with your opinion that the city council of Butte, by virtue of the authorization of the electors in accordance with law, may make the levy authorized from year to year, so long as the necessity therefor as determined by them, exercising a sound discretion, exists, without re-submitting the question to the electors.

Sincerely yours,
R. V. BOTTOMLY
Attorney General