

Opinion No. 187.

Taxation—Weed Control District—
District, Weed Control

Held: 1. In providing funds for weed control and weed seed extermination, under Section 13 of Chapter 195, Laws of 1939, as amended, county commissioners may either appropriate from the general fund of the county, or levy a tax not exceeding two mills on the dollar, but may not use both methods.

2. The tax so authorized to be levied must be levied on all the property of the county, including property within incorporated cities or towns.

August 5, 1946.

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

I have your request for an opinion on the following questions:

1. Under the provisions of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, does the two mill tax levy apply to all property within the county, including property within incorporated cities and towns which are not included within a weed control district, but which are surrounded by such a district?

2. In providing funds, are the commissioners limited to the two mill levy, or may they use both the levy and appropriation from the general fund?

I am advised the district desires to budget the sum of \$17,000,000, but a two mill levy will bring in only \$10,000.00.

Section 5 of Chapter 195, Laws of 1939, authorizes the county commissioners, upon petition of land owners and after hearing, to create a weed control and weed seed extermination district outside of any incorporated town or city of the county. Section 8 of the act authorizes the city or town council to create such a district within the boundaries of such city or town.

Section 13 of the act, as amended by Chapter 90, Laws of 1941, authorizes the creation of a fund by the county commissioners. The language of this section is determinative of your second question. It provides in part:

"The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or . . . levy a tax not exceeding two (2) mills on the dollar of total taxable valuation of such county."

The legislature has provided two methods by which the fund may be raised, that is, (1) by appropriation of the amount found necessary from the general fund of the county or (2) by levying a tax not exceeding two mills.

By the use of the disjunctive "or" the legislature has made it clear it intended only one of the methods could be used in providing the funds.

In construing a statute, its words and phrases must be given their plain and ordinary meaning. (*State v. Bowker*, 63 Mont. 1, 205 Pac. 961.) A word used in a statute is understood in its ordinary sense where not technical, and not defined in the codes, and without peculiar meaning. (*McNair v. School District*, 87 Mont. 423, 288 Pac. 188.)

Webster's Dictionary defines the word "or" as "a co-ordinating particle that marks an alternative; as, you may read or may write—that is, you may do one of the things at your pleasure, but not both." And Black's Law Dictionary defines the word "either" as "properly one or the other of two things." (See also the following cases: *Austin v. Oakes*, 1 NYS 307; *Third National Bank v. Bond*, 64 Kan. 346, 67 Pac. 818; *Ryegber v. City of Freeport*, 143 Ill. 92, 32 N. E. 372.)

In the case of *Third National Bank v. Bond*, supra, a Kansas statute provided a mortgage may be filed in one county under certain conditions or in another under other conditions. The statute used the word "or" and—in interpreting it—the court said:

"The disjunctive conjunction 'or', as here used, is purely and strictly alternative in its effect, and expresses that a choice may be made of one of the two places in which the registration of a mortgage may be had . . . There is nothing in the context, nor in the subject of legislation in this statute, to give the word a different meaning than that in which it is ordinarily used."

In answer to your second question, it is my opinion the commissioners may adopt one of the methods provided in the statute for raising funds, that is, they may appropriate the necessary amount from the general fund of the county or they may levy the tax as provided; but they cannot use both methods.

In answering your first question, it is necessary to consider the provisions of the act as a whole. It will be noted that by Section 9 of the act, county commissioners are authorized to appoint a board of supervisors only in such counties "in which a city, town,

or county weed control and weed seed extermination district is created." The supervisors so appointed are given the authority to supervise "within the districts of their county" the extermination or control program as promulgated by the commissioners. While the act requires petitions for creation of districts within incorporated cities and towns to be presented and passed upon by the governing body of such cities and towns, the supervision, levying of the tax and promulgation of the program is placed specifically in the county commissioners and board of supervisors. These provisions would indicate that the legislature recognized that the control and extermination of weeds and weed seeds was beneficial to the entire county.

Section 13 authorizes the county commissioners to set up a separate fund to be known as the "noxious weed control and weed seed extermination fund." It then provides that this fund shall consist either of money appropriated from the general fund of the county or from a tax levy. And in providing for the tax levy, the legislature used the specific language "levy a tax not exceeding two mills on the dollar of total taxable valuation in such county." It would therefore appear clear that the levy is to be made on a county wide basis.

It is therefore my opinion:

1. In providing funds for weed control and weed seed extermination, under Section 13 of Chapter 195, Laws of 1939, as amended, county commissioners may either appropriate from the general fund of the county, or levy a tax not exceeding two mills on the dollar, but may not use both methods.

2. The tax so authorized to be levied must be levied on all the property of the county, including property within incorporated cities and towns.

Sincerely yours,
R. V. BOTTMLEY,
Attorney General