

Opinion No. 10

**Post-War Funds—Funds, Post-War—
Road and Bridge Fund—Taxes,
Post-War.**

Held: That under Chapter 69, Laws of 1945, and Section 3 thereof, no expenditures for any purpose whatever shall be made from the special road and bridge fund provided for therein, by the board of county commissioners of any county in the state until after the date proclaimed by the President or by Congress as the date of the termination of the existing war emergency.

January 21, 1947.

Mr. W. G. Gilbert, Jr.
County Attorney
Beaverhead County
Dillon, Montana

Dear Mr. Gilbert:

You have advised me that the county commissioners of Beaverhead County are desirous of obtaining for use at the earliest possible moment, for needed bridge and road work, the monies made available under Chapter 69 of the Laws of 1945. You inquire as to when those funds may be made available under the terms of Chapter 69 of the Laws of 1945.

It was undoubtedly the purpose of the legislature in enacting Chapter 69, Laws of 1945, to provide post-war funds for the purposes therein set forth, to take up the slack of employment they felt would be in existence upon the termination of the war emergency. I think this is a fair deduction from the reading of the title and the act as a whole.

Also, it was felt repair work and bridge work, and other construction during the war years would be neglected because of the lack of funds and the impossibility of getting materials. In Section 1 of the act the

legislature stated the purpose as follows:

“For the purpose of accumulating and providing post-war funds for the construction, improvement, repair and maintenance of public highways and bridges following the date proclaimed by the President as the termination of the existing war emergency, or following the date specified by Congress as the date of such termination, the board of county commissioners of each county in this state may, in their discretion, levy and cause to be collected, during each or either of the fiscal years beginning July 1, 1945 and ending June 30, 1946, and beginning July 1, 1946 and ending June 30, 1947, a special tax upon the taxable property in the county lying outside of the corporate limits of incorporated cities and towns, of not more than five (5) mills on the dollar . . .”

Again in Section 3 of the act the legislature uses mandatory language as follows:

“No expenditures for any purpose whatever shall be made from such special road and bridge fund until after the date proclaimed by the President or by Congress as the date of the termination of the existing war emergency.”

Again in Section 4 of the act like language is used. It is presumed that the legislature had in mind the proclamation by the President of the United States of May 27, 1941, being No. 2487, which was a general and unlimited national emergency proclamation, (55 Stats. at Large, page 1647,) and which proclamation set in motion a great many of the laws of the national government as well as laws of the several states.

This unlimited national emergency proclamation has never been altered since it was proclaimed, either by the President or by Congress.

On December 31, 1946, at 1:19 P. M. there was filed the proclamation of the President of the United States, No. 2714, the pertinent part of which is as follows:

“Although a state of war still exists, it is at this time possible to declare, and I find it to be in the

public interest to declare, that hostilities have terminated.

"Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946."

There are many laws which this proclamation of the President terminated; there are many other wartime laws, both state and national, which this proclamation does not affect as the state of war still exists. There are other laws, both state and national, which will not be terminated until after the declaration of peace by the President or the Congress.

Under Chapter 69, Laws of 1945, and Section 3 thereof, it is my opinion that no expenditures for any purpose whatever shall be made from such special road and bridge fund by the board of county commissioners of any county in the state until after the date proclaimed by the President or by Congress as the date of the termination of the existing war emergency.

What I have said, supra, in regard to Chapter 69, Laws of 1945, applies also to Chapter 131, Laws of 1945, and especially to Section 3 thereof.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.