

Opinion No. 126**County Commissioners — Roads and
Bridges, Construction of — Levy,
Increased—Property, Taxable
Taxable Property**

Held: Where a board of county commissioners, in their discretion, and for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten mills or less, as provided in Sections 4713, 4714, 4715 and 4716, Revised Codes of Montana, 1935, the said levy is to be spread upon all of the taxable property within the county.

July 8, 1948

Mr. Milton G. Anderson
County Attorney
Richland County
Sidney, Montana

Dear Mr. Anderson:

You have submitted to me for my opinion the question as to whether or not the increased levy for the constructing of roads and bridges, authorized by Section 4713, Revised Codes of Montana, 1935, shall be spread on all the taxable property in the county, that is, within and without the corporate limits of cities and towns.

Section 4713, Revised Codes of Montana, 1935, was passed as Chapter 160, Laws of 1919, and the title of that Act was as follows:

"An Act to Provide for an Increased Levy Upon the Taxable Property in the County for the construction of Highways and Bridges,

and Providing for the Submission of such Proposed Increased Levy to a Vote of the Electors of the County." (Emphasis supplied).

Section 1 of said Act, which is now

Section 4713, Revised Codes of Montana, 1935, is as follows:

"The board of county commissioners may, in their discretion, for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten (10) mills or less; provided, that such portions of the funds derived under the provisions of this act as are expended on state and main highways shall be expended under plans approved by the State Highway Commission." (Emphasis supplied).

Section 2 of said Act, which is now Section 4714, Revised Codes of Montana, 1935, is, in part as follows:

"Before such increased levy shall be made, the question shall be submitted to a vote of the people at some general or special election, and shall be submitted in the following form, inserting the number of mills proposed to be levied:

"Shall there be an increased levy of mills upon the taxable property of the county of state of Montana, for the purpose of constructing roads and bridges?" (Emphasis supplied).

In passing it may be stated that Chapter 160, Laws of 1919, is a special act for the purpose of an increased levy upon taxable property in the county. The title of the Act and the first and second sections of the Act clearly state that the increased levy will be upon the taxable property of the county. There is no question but the intent of the legislature is clearly expressed in the foregoing quoted words of the Act. The legislature, by this Act, has made the county the taxing district; therefore, all taxable property in the county, regardless of where it is situated, is to be impressed with such increased levy.

Also, it should be noted the Act provides that the proposition of the increased levy be submitted to the electors of the county.

It has been suggested that Section 1617, Revised Codes of Montana, 1935,

as amended, would in some way restrict the operation of Section 4713 and Sections following. However, it should be pointed out that Section 1617 provides for the general road tax to be authorized by the board of county commissioners, without an election, while Section 4713 and Sections following provide for an increased, or extra levy, and is an entirely different tax, and a different procedure is required before the tax may be impressed.

Our Supreme Court, in considering the same question herein involved, and where the controversy hinged upon the meaning and effect of Section 1617, Revised Codes of Montana, 1935, stated, in part, as follows:

"The only exemption accorded to city property by Section 1617 is exemption from the five mill levy therein provided for. The proposed bond issue requires a separate and special levy (Sec. 4630.25) over and above the five mill levy provided for in Section 1617.

"So property in a city may be taxed for the construction and maintenance of highways situated wholly outside of its corporate limits but within the taxing district of which it is a part."

Again, the Court, in discussing Section 1617, supra, said at page 516 of said opinion:

"As to any excess levy, city property owners stand on the same basis under the laws here in question, as rural property owners of the county who have paid the five mill levy and who hold a receipt for the actual payment thereof."

State ex rel, Seigfried v. Carbon County, et al, 108 Mont. 510, 514; 92 Pac. (2d) 301.

So it would appear in this matter, wherein the legislature has authorized the board of county commissioners, in their discretion, for the purpose of constructing roads and bridges, to make an increased levy upon the taxable property of the county of ten mills or less, when approved by the electors of the county. This levy will extend upon all of the taxable property within the county. It is clear the legislature so intended. Under this special levy the property owners with-

in the city will bear the same proportion of the levy as those without the city or town and, too, it is to be remembered that before this levy may be made it must be submitted to vote of all the qualified electors of the county at a general or special election.

It is therefore, my opinion that where a board of county commissioners, in their discretion, and for the purpose of constructing roads and bridges, make an increased levy upon the taxable property of the county of ten mills or less, as provided in Sections 4713, 4714, 4715 and 4716, Revised Codes of Montana, 1935, the said levy is to be spread upon all of the taxable property within the county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General