

the sale must be made by an ordinance or resolution passed by two-thirds vote of the council. If the property is held in trust for a specific purpose, then the sale must be approved by a majority vote of the taxpayers. This statute contains no specific directions as to the disposition of the money realized from the sale.

In the absence of any controlling statute, the Municipal Budget Law, Chapter 14 of Title 11, R. C. M., 1947, would apply. In the preparation of the budget the city clerk must, under Sec-11-1404, R. C. M., 1947, prepare estimated receipts from all sources and include the surplus or unencumbered treasury balances at the close of the fiscal year. After the adoption of the budget estimated receipts and cash balances are deducted from the appropriations in determining the amount to be raised by taxation. (Section 11-1406, R. C. M., 1947.) In other words, all cash balances on hand which are not held separate under the terms of a specific statute are to be used to reduce the amount to be raised by taxes for each fiscal year. In *Rogge v. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, the court applied the rule that cash on hand must be taken into consideration in fixing the levy for a county budget.

While the proceeds of the sale of the city hall have been held for several years and should have been used in the next budget after the sale, yet this does not change the rule and such funds should be now used in the current budget. The purchase of the city water works is capital expenditure and the funds may now be devoted to the capital outlay item for the purchase of the water system.

The city election which authorized the sale of the city hall might have been necessary if the property was conveyed to the city trust for a specific purpose. Such an election would only relieve the city of the obligation of the trust but could not impress on the moneys realized from the sale any designated use. A municipal corporation may hold an election only when authorized by statute and only for the purposes fixed by law. This is well stated in 18 Am. Jur. 243, Sec. 100, in the following language:

Opinion No. 96.

Cities and Towns—Budgets—Money Realized From Sale of Property Used in Budget.

HELD: The money realized from the sale of a city hall must be used by the city in the next budget.

September 30, 1954.

Mr. R. E. Towle,
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You have requested my opinion concerning a city budget problem. You advise me that a city submitted to the qualified electors who were taxpayers the question of selling the city hall and placing the proceeds of sale in a fund to purchase the water works. The electors approved the proposition and the funds realized from the sale have been held for several years for the stated purpose. Your specific question is directed to the propriety of this procedure.

Section 11-964, R. C. M., 1947, gives to the city council the power to sell any property belonging to the city and

“There is no inherent right in the people, whether of the state or of some particular subdivision thereof, to hold an election for any purpose. Such action may be taken only by virtue of some constitutional or statutory enactment which expressly or by direct implication authorizes the particular election. The rule is firmly established that an election held without authority of law is void, even though it is fairly and honestly conducted.”

It is, therefore, my opinion that the money realized from the sale of a city hall must be used by the city in the next budget.