

Opinion No. 37

Counties—Cities and Towns—Taxation—Proceeds of 4% Tax on  
Sales of Liquor

- Held: 1. That the proceeds of the tax on the retail price of liquor provided in Chapter 217, Laws of 1957, is for the use of the general fund of cities, towns and counties.
2. That the legislature by granting the revenue realized under Chapter 217, Laws of 1957, did so to alleviate the increased expense of law enforcement resulting from the operation of establishments selling liquor.

December 12, 1957

Mr. Chester L. Jones  
County Attorney  
Madison County  
Virginia City, Montana

Dear Mr. Jones:

You requested my opinion concerning the use of funds realized by counties from the proceeds of the liquor license tax levied under the provisions of Chapter 217, Laws of 1957. Specifically you asked if the moneys should be placed in a separate and special fund or should be used in the general fund as additional revenue for the operation of the county government.

It is to be noted that the title to Chapter 217, Laws of 1957, contemplates that the revenue from an additional tax in the amount of 4% of the retail price of liquor sold in Montana shall be allocated to each county on the basis of liquor sold within the county and shall be apportioned to incorporated towns within each county. One of the provisos in the title reads:

“. . . for said Funds to be Deposited to the Credit of the General Funds of said Incorporated Cities and Towns, and Counties, and for said Funds to be expended for Law Enforcement and Regulation and Control of the Sale of Liquor and the Use Thereof; . . .”

It is apparent from the foregoing that the additional revenue is made available to counties and cities to alleviate the law enforcement problems resulting from the sale and use of liquor. Section 2 of Chapter 217 expresses the same purpose in the following language.

“The license tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities and towns, and counties and shall be expended by said incorporated cities and towns, and counties for law enforcement and the regulation and control of the sale of liquor and the use thereof.”

While the foregoing recognizes the need and states the reason for making such funds available for law enforcement, yet it does not provide for any special fund and in fact states that “tax moneys when so apportioned shall be deposited to the credit of the general funds of said incorporated cities and towns, and counties”.

There is a limitation of 20 mills annually on the tax for general fund purposes fixed by Section 16-1015 RCM, 1947, as amended for the operation of the county government. It is true that additional levies may be made for special funds such as the Sinking and Interest Fund, Section 16-2039 RCM, 1947, the County Road Tax as permitted in Section 32-201 RCM, 1947, and the County Bridge Tax as authorized in Section 32-702 RCM, 1947, as amended. There are other special

taxes which must be handled separately in the county budget. However, the 4% tax on liquor as provided in Chapter 217, Laws of 1957, under the terms of the act must be placed in the general fund. This was granted by the legislature to alleviate the law enforcement burden resulting from the use of liquor. While the purpose of the grant of the additional income is explained in Chapter 217, Laws of 1957, yet there is no requirement that it is to be separated from other general fund moneys and be devoted only to law enforcement problems. The 20 mill limitation of taxation for the general fund is not restricted in any manner by the additional income realized from Chapter 217, Laws of 1957, and the net result is additional income other than that realized from taxation of property in the county for the operation of the county government including its law enforcement duties.

To place the proceeds of the 4% tax on liquor in a separate fund for law enforcement would not necessarily result in the expenditure of an increased amount for such purpose. There is no statute fixing the amount which must be expended from the general fund for law enforcement and the county commissioners could treat the tax on liquor as merely additional income for law enforcement and appropriate less from other tax moneys for such purpose. However, the legislature expressed the intent that these moneys be used for law enforcement and in good conscience they should be so expended in addition to other tax money to achieve greater police protection to the public.

Similar reasoning applies to the moneys realized from the liquor tax to the financing of cities and towns as Section 84-4701 RCM, 1947, as amended, fixes a limit on the annual tax for the general fund of cities and towns.

It is therefore my opinion:

1. That the proceeds of the tax on the retail price of liquor provided in Chapter 217, Laws of 1957, is for the use of the general fund of cities, towns and counties.
2. That the legislature by granting the revenue realized under Chapter 217, Laws of 1957, did so to alleviate the increased expense of law enforcement resulting from the operation of establishments selling liquor.

Yours very truly,  
FORREST H. ANDERSON  
Attorney General