

Opinion No. 14

COUNTY COMMISSIONERS; Powers; highways and bridges; special levy—COUNTIES; Highways and bridges; special levy—TAXATION; Assessment; road tax—Sections 16-1906 and 16-2202, Revised Codes of Montana, 1947

Held: The authority granted by the electors for a special levy under Chapter 22 of Title 16, Revised Codes of Montana of 1947, permits one levy to be made and that no subsequent levy for this special tax may be made unless approved by the voters at a special election.

July 2, 1959

Mr. Willis McKeon
Phillips County Attorney
Malta, Montana

Dear Mr. McKeon:

You have requested my opinion as to whether the increased levy for the construction of roads and bridges, which was authorized by the electors in 1954, may be imposed by the county commissioners each year thereafter.

Under Chapter 22 of Title 16, RCM, 1947, an increased levy for road and bridge construction is authorized. Section 16-2202, RCM, 1947, states "before such increased levy shall be made, the question shall be submitted to the people at some general or special election . . ."

The use of the singular "levy" rather than "levies" clearly indicates the legislative intent that the approval of the qualified electors in a condition precedent to each tax for road and bridge construction. In other words, no continuing power is granted to the Board of County Commissioners to levy annually this special tax after one approving vote has been given. One election would authorize one levy.

If we assume that the authority granted at one election continues for succeeding years, then we will reach a conclusion that is contrary to our accepted theory of public finance. In Section 16-1906, RCM, 1947, a part of the county budget system, it is provided "The estimates of expenditures . . . as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby . . ." This means that we finance our county operations on a year to year basis and county improvements are financed for one fiscal year. In *Rogge vs. Petroleum County*, 107 Mont. 36, 80 Pac. (2d) 380, our Supreme Court expressly held that a tax for sinking fund purposes could not exceed the amount necessary for the payment of interest and retirement of bonds falling

due in the fiscal year and that our financing is done on a year to year basis. It is held in the case of *State ex rel. Tillman vs. District Court*, 101 Mont. 176, 53 Pac. (2d) 107, "The power of taxing officials exists only by virtue of the statutes empowering them to act." Applying this rule to Section 16-2202, RCM, 1947, it must be concluded that an approving vote of the electors is required before the additional levy may be made.

Also it must be observed that if one election gives authority to the commissioners to levy the tax for succeeding years it could result in an imposition of a tax on property owners who had no opportunity to cast their ballot. While the improvements contemplated at the time of the original election met with public approval, those under subsequent levies might not have such approval and the voters would have no choice. Surely one election should not grant to the commissioners such broad taxing powers.

It is, therefore, my opinion that the authority granted by the electors for a special levy under Chapter 22 of Title 16, Revised Codes of Montana of 1947, permits one levy to be made and that no subsequent levy for this special tax may be made unless approved by the voters at a special election.

Very truly yours,
FORREST H. ANDERSON
Attorney General