

Opinion No. 47**COUNTY COMMISSIONERS; Powers; Special Levy for P.E.R.S.—PUBLIC EMPLOYEES' RETIREMENT SYSTEM; Counties; Special Levy for—TAXATION; Special County Levy for P.E.R.S.—Sections 68-302; 68-603.**

Held: 1. A county is authorized to levy a special tax upon the assessable property within the county in an amount sufficient to pay the contributions required to the Public Employees' Retirement System when such moneys are not available from general revenue sources.

September 18, 1962

Mr. Albert E. Leuthold
State Examiner
State Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion as to "whether counties are permitted to make a special levy for county portion of retirement payments?"

Section 68-603, Revised Codes of Montana 1947, provides:

"The contracting city participating in the system as provided in this act, shall make such contribution to the retirement system, on account of its approval of the participation of its employees in the public employees' retirement system, as may be recommended by the actuary, in either or both fixed sums or percentage of total compensation of said employees who are members, approved by the board of administration and certified by said board to the legislative body of the contracting city, said contribution being also referred to herein as definitive contribution. Said definitive contribution shall be subject to such adjustment as may be necessary on account of any additional prior service credits which the contracting city may desire awarded to employees of such contracting city or on account of experience under the system as determined by the periodical investigation, valuation and determination provided for in Subdivision (j) of Section 68-501. Said contribution shall be paid to the retirement system at times and in the manner provided in the contract between the system and the contracting city. The legislative body of said contracting city shall budget in each fund, from which compensation for personal serv-

ices are paid in whole or in part, an amount sufficient to pay the contributions required to the retirement system, **and, if moneys are not available in such funds from general revenue sources in sufficient amount for that purpose, (the city) shall have authority to budget, levy and collect annually a special tax upon the assessable property within the city** in the number of cents per one hundred dollars (\$100.00) of assessable property as will be sufficient to raise **the amount estimated by the said legislative body to be required to provide sufficient revenue to meet the obligation of the city to the retirement system** under this section and under Section 68-301; **which said rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied in said city.** Any person who is a member or beneficiary of the retirement system on account of the participation of said contracting city, shall have the right to maintain appropriate action or proceeding to require performance of the duty imposed on said legislative body by this section and Section 68-301." (Emphasis supplied.)

And, Section 68-302, Revised Codes of Montana 1947, provides:

"Any county in this state may participate in the public employees' retirement system, making all or some of its employees members' of such system by contract entered into between the board of supervisors of such county and the board of administration of the retirement system. **The provisions of this act relating to cities, employees of cities, the entering into contracts between cities and the board, the method of computing benefits and the benefits payable to city employees, and all other provisions of this act which relate to cities which elect to include employees under the public employees' retirement system shall also apply to counties in the same manner to the same extent, and with the same effect as if counties instead of cities were expressly referred to in such provisions.**" (Emphasis supplied.)

Both of the sections above quoted were enacted under Chapter 212, Session Laws of Montana, 1945.

It is my opinion, therefore, that, in the situation contemplated by Section 68-603, supra, counties may levy a special tax to meet their obligation to the retirement system.

Very truly yours,
FORREST H. ANDERSON
Attorney General