

COUNTIES - Water and sewer districts; authority to levy taxes and incur an indebtedness. Sections 16-4514, 16-4517, and 16-4527, R.C.M. 1947.

- HELD:**
1. A county water and sewer district may levy taxes pursuant to the provisions of section 16-4527, R.C.M. 1947, to finance a preliminary engineering and well exploration study.
 2. A county water and sewer district may not incur an indebtedness without holding an election as required by section 16-4517, R.C.M. 1947.

June 16, 1971

Mr. William A. Douglas
Lincoln County Attorney
321 Mineral Avenue
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion on the following question:

“Pursuant to the provisions of section 16-4527, R.C.M. 1947, may the county commissioners of Lincoln County, Montana, levy a tax upon that property, located within the boundaries of South Libby Flats water and sewer district, to finance the needed engineering study and well exploration without the board of directors of the district first passing a resolution and holding an election thereon for a bonded indebtedness, all of which is provided in sections 16-4517 through 16-4522, R.C.M. 1947?”

You state in your letter that the South Libby Flats water and sewer district has been established pursuant to the requirements of Title 16, chapter 45, Revised Codes of Montana, 1947. Further, you advise that the district has entered into a contract with an engineering firm to do a preliminary engineering and well exploration study.

Section 16-4514, R.C.M. 1947, provides in part that the district is to have the power:

“*** (10) To cause taxes to be levied in the manner provided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided; . . .”

The manner provided for levying taxes is set forth in section 16-4527, R.C.M. 1947. The clear purpose of the act is to provide for the construction and maintenance of water or sewer development projects.

A duly constituted water and sewer district is granted the power to levy taxes to accomplish the purposes of this act in the manner provided in section 16-4527, R.C.M. 1947. It is reasonable to conclude that a preliminary engineering and well exploration study comes within the purpose of this act. In addition, a preliminary study is advisable in order that the electors may be intelligently informed of the nature and the cost of the project when they are requested to approve a bond measure.

Therefore, pursuant to the provisions of section 16-4527, R.C.M. 1947, a county water and sewer district may levy taxes to finance a preliminary engineering and well exploration study. In this regard see **Parker v. County of Yellowstone**, 140 Mont. 438, 374 P.2d 328 (1962), for a discussion of whether section 16-4527, R.C.M. 1947, provides for a tax or an assessment.

Your letter also raises a question as to whether or not an election must be held if a debt is incurred by the district. Section 16-4514, R.C.M. 1947, authorizes a district: "To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness . . .". Section 16-4517, R.C.M. 1947, provides that an election must be held before a district can incur a "Bonded indebtedness". Bonded indebtedness is defined as "Indebtedness lawfully contracted for corporate purposes, payable from taxes on all property within municipality." **Black's Law Dictionary**, page 226. Based on the foregoing definition, it seems clear that the term "bonded indebtedness" is sufficiently broad to include a contract for a preliminary engineering and well exploration study. Therefore, before the district can incur an indebtedness it must hold an election as required by section 16-4517, R.C.M. 1947.

The question of what constitutes an indebtedness was considered by the supreme court in **State v. Board of Trustees, et al.**, 91 Mont. 300, 7 P.2d 543 (1932). The court, interpreting section 2, Article XIII, Montana Constitution, said:

"In 'In construing our constitutional provision applicable, we have under consideration the meaning of the words "debt or liability," and in our view the prohibition intended by these words is the creation of a debt or obligation of the state in excess of cash on hand and revenue provided for,' and we there held that this constitutional limitation 'has reference to such a liability as singly or in the aggregate will obligate the state to an

amount in excess of \$100,000 over and above cash on hand and revenues having a potential existence by virtue of existing revenue laws.***' ”

If the district can pay for the preliminary engineering and well exploration study from the cash on hand, or revenues having a potential existence by virtue of existing revenue laws, then there will be no need for a vote. However, if an indebtedness is to be incurred as defined by the supreme court, then the provisions of section 16-4517, R.C.M. 1947, relating to an election must be followed.

One final question for review is the applicability of section 5, Article XIII, Montana Constitution, which provides in part:

“No county shall incur an indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.”

The foregoing provision applies to a county, but not to a special purpose public corporation such as a water and sewer district. The restriction on a district incurring an indebtedness without a vote is contained in section 16-4517, R.C.M. 1947.

THEREFORE, IT IS MY OPINION that:

1. A county water and sewer district may levy taxes pursuant to the provisions of section 16-4527, R.C.M. 1947, to finance a preliminary engineering and well exploration study.
2. A county water and sewer district may not incur an indebtedness without holding an election as required by section 16-4517, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General