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VOLUME NO. 45

OPINION NO. 25

HEALTH BOARDS AND DISTRICTS - City-county boards of health, financing, application of tax limitations to special levies;
TAXATION AND REVENUE - Application of property tax limitations in Mont. Code Ann. title 15, chapter 10, part 4, to special levies which finance city-county boards of health pursuant to Mont. Code Ann. §§ 50-2-111(2) and -114;
MONTANA CODE ANNOTATED - Title 15, chapter 10; sections 15-10-401 and -402, 15-10-411 and -412, 50-2-111, 50-2-114;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987).

HELD: If the conditions established in Mont. Code Ann. § 15-10-412(11)(b)(i) are met, the limitations on the amount of taxes levied which are set forth in Mont. Code Ann. title 15, chapter 10, do not apply to either the special one-mill levy under Mont. Code Ann. § 50-2-114 or the special five-mill levy under Mont. Code Ann. § 50-2-111(2)(b).

June 21, 1994

Mr. Dennis Paxinos
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Paxinos:

You have requested an Opinion of the Attorney General on the following questions:

1. Is the special one-mill levy authorized by Mont. Code Ann. § 50-2-114 subject to the taxation limitations imposed under Mont. Code Ann. §§ 15-10-401, -402, 15-10-411, and -412?
2. Is the special five-mill levy authorized by Mont. Code Ann. § 50-2-111(2)(b) subject to the taxation limitations imposed under Mont. Code Ann. §§ 15-10-401, -402, 15-10-411, and -412?

The taxation limitations to which you refer are the result of the codification of Initiative 105 (Mont. Code Ann. §§ 15-10-401 and -402), and the legislature's subsequent clarification and modification of the initiative (Mont. Code Ann. §§ 15-10-411 and -412). A previous Attorney General's Opinion, 42 Op. Att'y Gen. No. 21 (1987), held that such legislative modifications to an initiative are valid.

Your specific questions refer to city-county boards of health, one of several types of local boards of health discussed in Mont. Code Ann. title 50, chapter 2, and § 15-10-412(11)(b)(i). The county's share of the financing of a city-county board of health may come from either of two sources: (1) the county may appropriate money from its general fund, Mont. Code Ann. § 50-2-111(1); or (2) the county may, subject to specified conditions, establish a special levy of not more than five mills, Mont. Code Ann. § 50-2-111(2).

A county may choose to appropriate money from its general fund to support a city-county board of health, and such appropriation may not be sufficient to meet the board's approved budget. In this situation, the county may, subject to specified conditions, make a special levy of not more than one mill. Mont. Code Ann. § 50-2-114. The general fund appropriation and special one-mill levy are a financing mechanism which is mutually exclusive from the special five-mill levy. Mont. Code Ann. §§ 50-2-111 and -114.

Montanans have enacted limitations on property taxes in Mont. Code Ann. title 15, chapter 10, part 4. These limitations have been made quite specific by Mont. Code Ann. § 15-10-412. Subsection (11) of that statute sets forth several exceptions to the general limitation of property taxes to 1986 levels:

(11)(a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(1) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); and

(iii) a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in 7-14-1632.

Mont. Code Ann. § 15-10-412(11).

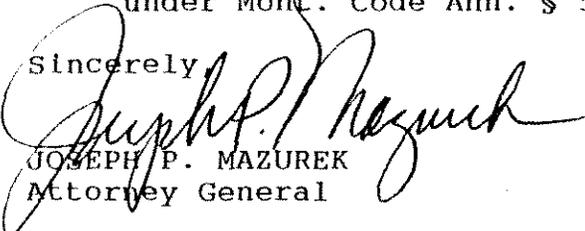
Subsection (11)(b)(i) establishes a specific exception to the general limitation on tax levies established in Mont. Code Ann. title 15, chapter 10, for city-county boards of health. This exception is separate from and independent of subsection (11)(a). I must conclude that subsection (11)(b)(i) applies to both the one-mill special levy and the five-mill special levy. I reach this conclusion because the legislature made no attempt to distinguish the two special levies in fashioning the exception, and the legislature is presumed to act with full knowledge of existing laws, Thiel v. Taurus Drilling Ltd., 1980-II, 218 Mont. 201, 207, 710 P.2d 33, 36 (1985); Department of Revenue v. Burlington Northern, Inc., 169 Mont. 202, 211, 545 P.2d 1083, 1088 (1976).

Taking into account the complexity involved in reading statutes which place options upon options, the language of Mont. Code Ann. § 15-10-412(11) is clear: The tax limitations set forth in Mont. Code Ann. title 15, chapter 10, do not apply to city-county boards of health which meet the conditions of the statute. I must conclude that this is what the legislature intended, Dorn v. Board of Trustees, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983); White v. White, 195 Mont. 470, 473, 636 P.2d 844, 845-46 (1981).

THEREFORE, IT IS MY OPINION:

If the conditions established in Mont. Code Ann. § 15-10-412(11)(b)(i) are met, the limitations on the amount of taxes levied which are set forth in Mont. Code Ann. title 15, chapter 10, do not apply to either the special one-mill levy under Mont. Code Ann. § 50-2-114 or the special five-mill levy under Mont. Code Ann. § 50-2-111(2)(b).

Sincerely,


JOSEPH P. MAZUREK
Attorney General

jpm/rfs/bjh