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VOLUME NO. 45

OPINION NO. 29

COUNTY COMMISSIONERS - Suspension of property tax limitations by rural fire district;  
COUNTY COMMISSIONERS - Tax levy in excess of property tax limitations;  
ELECTIONS - Suspension of property tax limitations in taxing unit, procedure;  
FIRE DISTRICTS - Suspension of property tax limitations, procedure;  
TAXATION AND REVENUE - Determination of financial emergency for suspension of property tax limitations;  
TAXATION AND REVENUE - Suspension of property tax limitations, procedure;  
MONTANA CODE ANNOTATED - Sections 15-10-401, -402, -412; -412(10);  
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 126 (1988), 42 Op. Att'y Gen. No. 21 (1987).

HELD: The approval of the voters in a rural fire district, following a resolution of its board of directors pursuant to Mont. Code Ann. § 15-10-412(10), is sufficient to allow the board of county commissioners to continue to levy taxes in excess of the limitations established in Mont. Code Ann. §§ 15-10-401 to -412 in following years, without subsequent voter approval each year thereafter, if the voters of the taxing unit have been informed of the amount and the duration of the increase in tax liability.

November 1, 1994

Mr. A.W. "Tony" Kendall  
Carbon County Attorney  
P.O. Drawer 810  
Red Lodge, MT 59068-0810

Dear Mr. Kendall:

You have requested my opinion on the following question:

Is the approval of the voters in a rural fire district, following a resolution of its board of directors pursuant to Mont. Code Ann. § 15-10-412(10), sufficient to allow the board of county commissioners to continue to levy taxes in excess of the limitations established in Mont. Code Ann. §§ 15-10-401 to -412 in following years, without subsequent voter approval each year thereafter?

Your letter explains that your request arises from the actions of the trustees of the Joliet Rural Fire District [the district], which was created prior to 1986. In January 1993 the trustees of the district passed a resolution "[c]alling for an election to raise the Joliet Rural Fire District property tax limitation imposed by I-105." I-105 is now codified as Mont. Code Ann. §§ 15-10-401 and -402. The voters of the district approved the proposal, and in February 1994 the trustees of the district requested that you seek a writ of mandamus compelling the Carbon County Board of Commissioners to levy the taxes requested by the trustees of the district. You also note that Carbon County has general government powers.

Mont. Code Ann. § 15-10-412(10) sets forth the specific conditions that must be met if a taxing unit desires to avoid the limitation on the amount of taxes levied established by I-105:

(10) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

Id. As the first sentence of the subsection quoted above makes clear, the tax levy limitations imposed by Mont. Code Ann. §§ 15-10-401 to -412 do not apply if the voters in a taxing unit approve an increase in tax liability following the governing body's passage of a proper resolution.

Attorney General Greely held that Mont. Code Ann. § 15-10-412(10), the subsection of the Montana statutes quoted above, does not require that an election be held each year when a rural fire district proposes a long-term project entailing long-term tax increases, if the voters are properly notified of the nature of the tax increase. 42 Op. Att'y Gen. No. 126, 497 (1988). You have asked a more general question involving increased taxes for an unspecified period that are not necessarily tied to a specific project. I find nothing in Montana law, especially Mont. Code Ann. § 15-10-412(10), that prevents application of 42 Op. Att'y Gen. No. 126 to the situation you present. That is, voters of a taxing unit may approve one increase in the amount of tax liability--an increase which may be ongoing but must be for a single specified amount for a single specified period of time. This period of time may be of indefinite duration, as long as that is specified. Attorney General Greely held that voters had to be told of the "type and extent" of the increased tax liability they were being asked to approve. My only change in Attorney General Greely's wording would be to add that voters must be informed of "the amount and duration of the increase in tax liability." Section 15-10-412(10) leaves it to the voters to decide if the taxing unit's financial problems are serious enough that the tax limitations should be suspended. I believe this is the plain meaning of the language used in the statute, and thus, I need not proceed further in determining legislative intent. GBN, Inc., v. Montana Dep't of Rev., 249 Mont. 261, 265, 815 P.2d 595, 597 (1991).

You express concern that if the term "financial emergency" used in subsection (10)(b) is interpreted broadly, it may mean the implied repeal of Mont. Code Ann. §§ 15-10-401 and -402. I disagree. The repeal of a statute, either express or implied, is the complete abrogation of one statute by another, Butte & Boston Consol. Mining Co. v. Montana Ore Purchasing Co., 24 Mont. 125, 133, 60 P. 1039, 1042 (1900) (citing Sutherland on Statutory Construction). A broad interpretation would not technically meet the definition of implied repeal. Moreover, Mont. Code Ann. § 15-10-412(10) specifically permits individual taxing units to override I-105, and increase taxes in the individual taxing unit if two conditions are met. 42 Op. Att'y Gen. No. 21, 76, 80-81 (1987) held that the legislature could constitutionally enact such amendments.

The two conditions for overriding I-105 pursuant to Mont. Code Ann. § 15-10-412(10) are: (1) that the governing body of the taxing unit pass a resolution containing seven specified findings, estimates, summaries, and statements; and (2) that following the resolution, the voters in the taxing unit approve the increase in tax liability. A particular type or level of financial emergency is not a condition of the statute. Viewing the term "financial emergency" in the light of other terms used in the subsection, such as "insufficient funds to operate the taxing unit," "funding

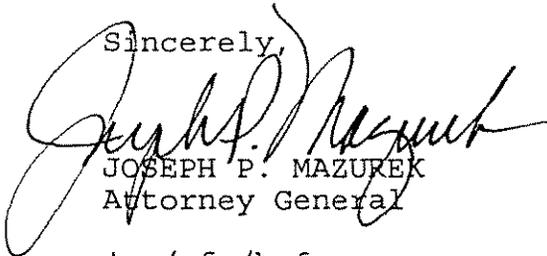
shortfall," "applicable fund balances are . . . depleted," "no alternative sources of revenue" and "need for increased revenue," I must conclude that a broad reading of the term was intended by the legislature. Wyse v. District Ct., 195 Mont. 434, 437, 636 P.2d 865, 866 (1981); State ex rel. Dunn v. Ayers, 112 Mont. 120, 127, 113 P.2d 785, 789 (1941). I conclude that a financial emergency of a particular nature or degree is not required when Mont. Code Ann. § 15-10-412(10) is invoked. It is up to the voters to decide if the taxing unit's financial "emergency" is severe enough to warrant the remedy of suspending property tax limitations.

Throughout this discussion, I have emphasized that the voters of a taxing unit are the ultimate arbiters on questions of a taxing unit's need to suspend tax limitations, and they must be properly informed. I would be going beyond the scope of your question and the opinion process if I were to address the factual issues of the validity of the resolution adopted by the trustees of the Joliet Rural Fire District and whether the voters of the district were given adequate notice of the increase in tax liability. However, I must reiterate that the governing body of a taxing unit is required to include seven very specific matters in its preelection resolution, pursuant to Mont. Code Ann. § 15-10-412(10). If this is done in accordance with statutory mandates, the voters of a taxing unit may vote to override I-105.

THEREFORE, IT IS MY OPINION:

The approval of the voters in a rural fire district, following a resolution of its board of directors pursuant to Mont. Code Ann. § 15-10-412(10), is sufficient to allow the board of county commissioners to continue to levy taxes in excess of the limitations established in Mont. Code Ann. §§ 15-10-401 to -412 in following years, without subsequent voter approval each year thereafter, if the voters of the taxing unit have been informed of the amount and the duration of the increase in tax liability.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/brf