

## 47 Op. Att'y Gen. No. 8

BONDS - Open-space bond proceeds used for maintenance and planning;  
CITIES AND TOWNS - Use of open-space bond proceeds;  
LAND USE - Open-space bond proceeds;  
LOCAL GOVERNMENT - Municipality's use of open-space bond proceeds;  
PARKS - Open-space bond proceeds used for maintenance of open-space land;  
MONTANA CODE ANNOTATED - Title 76, chapter 6, part 1; sections 7-16-4104, 76-6-109, -110.

HELD:

1. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act for the maintenance of open-space land acquired with the bond proceeds.
2. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act to fund the development of a comprehensive plan for purchase, use, development, and maintenance of open-space land.

October 2, 1997

Mr. David L. Nielsen  
Helena City Attorney  
316 North Park  
Helena, MT 59623

Dear Mr. Nielsen:

You have requested my opinion on the following questions:

1. Whether the Helena City Commission may use municipal general obligation bond proceeds for the maintenance of the fields and lands acquired with bond proceeds.
2. Whether the Helena City Commission may use a portion of the bond proceeds to pay for the creation of a comprehensive parks, recreation and open-space plan.

On July 22, 1996, the Commission for the City of Helena approved a resolution for an election authorizing the city to issue bonds for the purposes described in Mont. Code Ann. title 76, chapter 6, part 1. Title 76, chapter 6, is known as the Open-Space Land and Voluntary Conservation Easement Act ("the Act"). Mont. Code Ann. § 76-6-101. The purposes of the Act are threefold:

- (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;
- (2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and
- (3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

Mont. Code Ann. § 76-6-103.

The term "open-space land" as used in the Act means any land which is provided or preserved for:

- (a) park or recreational purposes;

- (b) conservation of land or other natural resources;
- (c) historic or scenic purposes; or
- (d) assisting in the shaping of the character, direction, and timing of community development.

Mont. Code Ann. § 76-6-104.

The Act also grants public bodies extensive powers to implement its provisions. Public bodies are defined as "the state, counties, cities, towns, and other municipalities." Mont. Code Ann. § 76-6-104(4). Under Mont. Code Ann. § 76-6-109(1), a public body is granted "all the powers necessary or convenient to carry out the purposes and provisions" of the Act. Specifically, the Act authorizes a public body to provide for the construction, maintenance, operation, or repair of any facility or structure necessary for the provision, preservation, maintenance and management of open-space land. Mont. Code Ann. § 76-6-109(1)(e).

A public body is also granted broad funding authority to carry out the purposes of the Act. Section 76-6-109(2) provides:

For the purposes of this chapter, the state or a city, town, other municipality, or county may:

- (a) appropriate funds;
- (b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill; [and]
- (c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state . . . .**

Mont. Code Ann. § 76-6-109(2) (emphasis added). Thus, in order to effectuate the purposes of the Act, a city may issue and sell general obligation bonds.

In its resolution submitting the bond question to the voters, the City of Helena expressly referred to the Act and the necessity to create, preserve, and maintain open-space land. The resolution also refers to the general bonding authority of the city as provided in Mont. Code Ann. § 7-7-4221 and the authority of the city to call for an election on the bond issue under Mont. Code Ann. § 7-7-4223.

Questions have arisen as to the authority of the city to issue such bonds. Such questions include whether the resolution and election were invalid because the city should have been acting pursuant to Mont. Code Ann. § 7-16-4104. Among other things, that section authorizes a city to issue bonds for the purpose of purchasing and improving lands for public parks and grounds, as well as for the purchase and construction of athletic fields. Total indebtedness incurred pursuant to that section, including the then-existing indebtedness, may not exceed 16.5 percent of the taxable value of the taxable property of the city. Mont. Code Ann. § 7-16-4104(2). This debt limit stands in contrast to the general limitation on municipal bonded indebtedness of 28 percent of the city's taxable value as described in Mont. Code Ann. § 7-7-4201 and referenced by the city in its resolution calling for the open-space bond election.

Section 76-6-109(2) authorizes the issuance of bonds to effectuate the purposes of the Act. It was this provision that was referenced in the city's resolution and it was pursuant to this authority that the city referred the bond election to the voters. The bond election was not based upon Mont. Code Ann. § 7-16-4104. The Act specifically provides that the powers it confers are "in addition and supplemental to the powers conferred by any other law." Further, even if there were an inconsistency between the Act and section 7-16-4104, the Act states that if any of the provisions in the Act are inconsistent with any other law, the provisions of the Act are controlling. Mont. Code Ann. § 76-6-105(1). Therefore, the restrictions in Mont. Code Ann. § 7-16-4101 do not apply here.

Your first question is whether the city may use the proceeds from the open-space bonds for the maintenance of fields and lands acquired with such proceeds. Mont. Code Ann. § 76-6-109(2) grants broad authorization for the use of bond proceeds in that bonds may be issued "for the purposes of the

[Act]." One purpose of the Act is to provide "for the preservation of . . . significant open-space land." Mont. Code Ann. § 76-6-103(2). The term "open space land" includes land provided and preserved for park or recreational purposes. Mont. Code Ann. § 76-6-104(3)(a). Under Mont. Code Ann. § 76-6-109(1)(e), a public body is granted the authority to provide for the maintenance, operation, or repair of facilities that may be necessary to the provision, preservation, maintenance, and management of property as open-space land. The specific reference to "maintenance" in § 76-6-109(1)(e) clearly indicates the legislature's intent to allow expenditure of funds for maintenance. Under the broad authority granted to a public body by the Act, bond proceeds may be used to maintain open-space land acquired by expenditure of the bond proceeds. You have not requested an opinion as to expenditure of bond proceeds to maintain open-space land not acquired by expenditure of bond proceeds and, accordingly, I express no opinion on that question.

You have also asked whether open-space bond proceeds may be used to fund the development of a comprehensive plan. Montana Code Annotated § 76-6-110(1) authorizes a city to perform comprehensive planning for the urban area. Funds may be appropriated and made available for such planning. Mont. Code Ann. § 76-6-110(2). The term "comprehensive planning" as defined in Mont. Code Ann. § 76-6-104(1) generally includes planning to implement the purposes of the Act. As such, under Mont. Code Ann. § 76-6-109(2), bond proceeds may be used to fund the comprehensive planning process.

THEREFORE, IT IS MY OPINION:

1. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act for the maintenance of open-space land acquired with the bond proceeds.

2. A city may use proceeds from bonds issued pursuant to the Open-Space Land and Voluntary Conservation Easement Act to fund the development of a comprehensive plan for purchase, use, development, and maintenance of open-space land.

Sincerely,

JOSEPH P. MAZUREK

Attorney General

jpm/ja/dm