

BONDS - County water and sewer district general obligation bond payable by levy on real and personal property in district;
COUNTIES - County water and sewer district general obligation bond payable by levy on real and personal property in district;
PROPERTY, PERSONAL - County water and sewer district general obligation bond payable by levy on real and personal property in district;
PROPERTY, REAL - County water and sewer district general obligation bond payable by levy on real and personal property in district;
SEWERS - County water and sewer district general obligation bond payable by levy on real and personal property in district;
STATUTORY CONSTRUCTION - Construction using plain, usual, ordinary meaning; where ambiguous, legislative intent discernable from legislative history;
WATER AND SEWER DISTRICTS - County water and sewer district general obligation bond payable by levy on real and personal property in district;
MONTANA CODE ANNOTATED - Title 7, chapter 13, parts 22, 23; title 20, chapter 9, part 4; sections 7-13-2151, -2221(3), (4), -2280 to -2282, -2301(2), -2303, (1), (2), -2303, -2331, (2), 20-9-142, 20-9-437(1), -438(1), -439(1), (b), (2);
MONTANA LAWS OF 1957 - Chapter 242, sections 14(9), (10), 25-27;
MONTANA LAWS OF 1967 - Chapter 263, section 1;
MONTANA LAWS OF 1995 - Chapter 518, section 7;
MONTANA LAWS OF 1999 - Chapter 351, section 2;
REVISED CODES OF MONTANA, 1947 - Sections 16-4514(8), (9), -4526 and -4527.

HELD: General obligation bonds issued by a county water and sewer district are payable by levy on the taxable value of all real and personal property within the district.

September 16, 2002

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

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Dear Mr. Paxinos:

You have requested my opinion regarding the kind of property against which the Yellowstone County Board of County Commissioners may levy to pay a general obligation bond issued by a county water and sewer district. I have phrased the question presented as follows:

May a county water and sewer district levy against both real and personal property to pay general obligation bonds issued to finance the construction of a sanitary sewer system?

In my opinion, such a levy is required under Mont. Code Ann. § 7-13-2331(2).

I.

The Lockwood Water and Sewer District wants to issue approximately \$30,000,000 in general obligation bonds to finance the construction of pumping stations, a river crossing to connect the District to the City of Billings' wastewater treatment plant, and the installation of 8- to 36-inch trunk mains and neighborhood collection lines. The bonds may be issued only if a proposition, stating the purpose for the proposed debt, the amount of the proposed debt, the maximum term for the proposed bonds, and the land in the district to be benefited, is approved by the district electors in a regular or primary election or in a special election conducted by mail ballot.

Before it calls an election, the District would like to know how the proposed bond issue would impact its constituents. Specifically, the District needs to ascertain whether the bonds may be paid by levy against both real and personal property, or only real property, in the District.

You stated that the District's attorney believes that both real and personal property in the District are subject to levy. The District's position is that it may levy against both real and personal property to pay its general obligation bonds, because Mont. Code Ann. § 7-13-2331 requires a county water and sewer district to issue its bonds in the same manner as a school district. Mont. Code Ann. § 20-9-142 requires levy on the taxable value of all real and personal property in a school district to finance the district's final budget, including debt service for outstanding district general obligation bonds. The District sees no conflict between Mont. Code Ann. § 7-13-2331, as it incorporates by reference the law governing school bonds, including Mont. Code Ann. § 20-9-142, and

Mont. Code Ann. §§ 7-13-2302 and -2303, which restrict levy to real property for payment of bonded debt caused by any revenue deficiency incurred by the district.

You also related that the District received an informal legal opinion from the Montana Department of Revenue that, pursuant to Mont. Code Ann. §§ 7-13-2302 and -2303, levy could only be “upon lands so benefited,” using an assessment based on the relative area or taxable valuation of “each lot or parcel of land to be assessed.” The Department surmised that, under Mont. Code Ann. § 7-13-2331(2), the water and sewer district statutes must prevail in the event of a conflict between Mont. Code Ann. § 20-9-142 and “the express provisions of part 22 or [part 23 of Title 7, chapter 13].”

II.

In 1957, the Montana Legislature authorized the creation of county water districts and gave districts the power to incur indebtedness, issue bonds, cause taxes to be levied to pay any district obligation, set water rates to pay the principal and interest on any bonded debt, and in the event of inadequacy in district revenues, to furnish the county commissioners with a written estimate of the amount of money needed to pay the interest and principal on a bonded debt as it becomes due, along with a description of the lands benefited by such indebtedness. See 1957 Mont. Laws, ch. 242, §§ 14(9), (10), 25-27, formerly codified as Rev. Codes Mont. 1947 §§ 16-4514(8), (9), -4526 and -4527, now Mont. Code Ann. §§ 7-13-2221(3), (4), -2301(2) and -2302(1). At the time, the stated expectation was that a water district would “pay the interest and principal of its bonded debt from the revenues of the district,” 1957 Mont. Laws, ch. 242, § 25, formerly, Rev. Codes Mont. 1947 § 16-4526, and only in the event of revenue deficiency in the district was the county commission empowered to levy a tax “upon the lands so benefited” sufficient for the payment of such bonded debt. Id. at § 27, formerly Rev. Codes Mont. 1947 § 16-4527, now Mont. Code Ann. § 7-13-2302(2).

In 1967, the laws governing county water districts were extended to include water and/or sewer districts. 1967 Mont. Laws, ch. 263, § 1. The statute governing a district’s ratemaking power was also amended to cover “sewer service, other services and facilities,” and to delete the specific declaration that bonded debt be paid from district revenues. Id., amending Rev. Codes Mont. 1947 § 16-4526.

In 1995, the 55th Montana Legislature gave county water and sewer districts the authority to issue general obligation bonds. 1995 Mont. Laws, ch. 518, § 7, codified as Mont. Code Ann. § 7-13-2331. This grant of authority was “in addition to” the powers

previously granted to county water and sewer districts to finance facilities and improvements. Id., § 7(1), now Mont. Code Ann. § 7-13-2331(1). A general obligation bond could be issued by a district for up to a forty-year term and be used to pay all or part of the costs to acquire, construct or improve district facilities. Id. The Legislature further directed that district general obligation bonds “be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part.” Id., § 7(2), now Mont. Code Ann. § 7-13-2331(2). Finally, the Legislature provided that a district could impose rates or other charges for the use of facilities financed in whole or in part by general obligation bonds, “if the revenue from the rates or charges is used to abate taxes that have been levied to pay the principal or interest on the general obligation bonds or is used to pay the principal or interest on other bonded indebtedness of the district.” Id., § 7(3), now Mont. Code Ann. § 7-13-2331(3).

In 1999, the 57th Legislature gave county water and sewer districts additional authority to levy a special assessment, in lieu of imposition of rates and charges, to pay the costs of any district capital improvements. 1999 Mont. Laws, ch. 351, § 2, codified as Mont. Code Ann. § 7-13-2280. Such an assessment could be imposed by board resolution, using assessment methods for rural improvement districts as prescribed in Mont. Code Ann. § 7-12-2151, following a hearing and possible written protest by district property owners to the method of assessment selected. Id., §§ 2-4, codified as Mont. Code Ann. §§ 7-13-2280 through -2282.

III.

Your opinion request requires construction of Mont. Code Ann. § 7-13-2331, particularly subsection (2), which provides:

(2) General obligation bonds issued pursuant to this section must be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part.

In interpreting a statute, I must “look first to the plain meaning of the words it contains” and give those words “their usual and ordinary meaning.” Duck Inn, Inc. v. Montana State University-Northern, 285 Mont. 519, 523; 949 P.2d 1179, 1181 (1997).

Subsection (2) clearly states that the “provisions for [the] payment” of general obligation bonds issued by a county water and sewer district be “in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4,” unless those conditions--meaning the conditions prescribed for school district bonds--“conflict with the express provisions of part 22 or [part 23 of Title 7, chapter 13].”

On its face, the Legislature’s intent is evident. Barring a conflict between school district bond statutes and an “express provision” of the statutes governing county water and sewer district statutes, the former controls. In event of a conflict between the school bonding statutes and an “express provision” of Title 7, chapter 13, parts 22 or 23, the latter controls.

Thus, the underlying question to be answered is whether there is a conflict between the school district bond statutes and an express provision of the county water and sewer statutes. The answer to that question lies in comparison of the various statutes and careful assessment of any apparent contradiction.

Review must begin with the statutes that prescribe or relate to the conditions of payment of school district bonds. Those statutes may be summarized as follows:

a. “[t]he full faith, credit, and taxable resources of a school district issuing [general obligation] bonds under the provisions of this title are pledged for the repayment of the bonds with interest . . .” Mont. Code Ann. § 20-9-437(1);

b. the trustees of each school district having outstanding bonds must “include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.” Mont. Code Ann. § 20-9-438(1);

c. the county superintendent must compute the net debt service fund levy requirement by “subtract[ing] the total amount available to reduce the property tax”--including, inter alia, any debt service fund end-of-the-year fund balance, anticipated interest to be earned by the investment of debt service cash or bond proceeds, and any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from legally

authorized fund transfers or rental income--“from the final budget for the debt service fund as established [by the trustees].” Mont. Code Ann. § 20-9-439(1)(b);

d. the county commissioners must levy the net debt service fund levy requirement reported by the county superintendent “in accordance with 20-9-142.” Mont. Code Ann. § 20-9-439(2); and,

e. the “county commissioners [must] fix and levy on all the taxable value of **all the real and personal property** within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.” Mont. Code Ann. § 20-9-142. (Emphasis supplied.)

In accordance with the foregoing statutes, school district bonds are clearly payable by levy on the taxable value of all real and personal property within a school district. Absent conflict with one or more “express” provisions of Title 7, chapter 13, parts 22 or 23, that same condition necessarily applies to payment of general obligation bonds issued by a county water and sewer district.

Webster’s Ninth New Collegiate Dictionary 438 (9th ed. 1988) defines the adjective “express” as “**1 a:** directly, firmly and explicitly stated . . . **b:** EXACT, PRECISE.” Thus, the limitation of Mont. Code Ann. § 7-13-2331(2) would only come into play if one or more provisions of part 22 or 23 of title 7, chapter 13, positively and unmistakably declared a contrary manner or condition for payment of general obligation bonds.

While several statutes in parts 22 and 23 of title 7, chapter 13, generally refer to bonded indebtedness incurred by county water and sewer districts, none of the statutes (except for Mont. Code Ann. § 7-13-2331) explicitly deal with the payment of general obligation bonds or refer to general obligation bonds as a specific type of bonded indebtedness. Therefore, I find no conflict between an express provision of part 22 or 23 and the statutes prescribing the manner and conditions for payment of school district bonds.

Mont. Code Ann. § 7-13-2221 permits a county water and sewer district to “(3) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district; and (4) cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part.” Certainly, no incompatibility is presented where the statute expressly sanctions taxes to

be levied in the manner provided for in part 23, including, as directed in Mont. Code Ann. § 7-13-2331(2), provision for payment of general obligation bonds “in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4”

Mont. Code Ann. § 7-13-2301(2) requires a county water and sewer district’s board of directors to fix the rates, fees or other charges for the services, facilities and benefits directly afforded by the facilities, to “be sufficient in each year to provide income and revenue adequate . . . for: . . . (c) the payment of principal and interest on any bonded or other indebtedness of the district.” Only if the revenues of the district become inadequate to pay the interest or principal of any bonded debt as it becomes due must (a) the district’s board of directors furnish to the board of county commissioners and the auditor, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, Mont. Code Ann. § 7-13-2302(1)(a); and, (b) the board of county commissioners “levy upon the lands so benefited and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof [any bonded debt not yet fully paid].” Mont. Code Ann. § 7-13-2302(2)(a). The amount of the levy with respect to a particular parcel of land must be predicated on either the ratio of such parcel’s acreage to the total assessed acreage or the ratio of the parcel’s taxable valuation to the total valuation of assessed lands. Mont. Code Ann. § 7-13-2303(1).

Read together, Mont. Code Ann. §§ 7-13-2301 through -2303 set the manner and conditions for payment of a bonded debt that is primarily based on revenues or fees generated from district services and contingently backed by a tax levy upon lands benefited by the district. These statutes do not expressly speak to the manner and conditions for payment of a bonded debt based on a general obligation.

Such a construction is not only consistent with the plain language of these statutes, but to the extent any ambiguity is created by references throughout these provisions to “any bonded debt,” I must adopt the interpretation most consistent with the evident legislative intent. Delaware v. K-Decorators, Inc., 1999 MT 13, ¶ 33, 293 Mont. 97, 973 P.2d 818, (1999). Where ambiguity exists, the Montana Supreme Court has approved resort to legislative history materials for evidence of legislative intent. Dorn v. Board of Trustees of Billings Sch. Dist. No. 2, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983).

Minutes from the hearing before the Senate Local Government Committee on HB 308 include an exhibit that was described as a summary of HB 308’s provisions prepared by a private attorney who acted as the scribe for the people who worked on the bill. Mins.,

Senate Local Gov't Comm., March 9, 1995, p. 9 of 11. The summary described then section 5 of the bill, later enacted and codified as Mont. Code Ann. § 7-13-2331, as follows:

[It] would authorize the district, upon approval of the voters of the district, to issue general obligation bonds to pay for the costs of capital improvements. **The current bonding provisions of the county water and sewer district law allow the issuance of what are referred to as tax backed revenue bonds. The use of a general obligation mechanism can be of value to certain districts that simply want to spread the costs of the improvements on an ad valorem property tax basis** and collect these amounts twice a year. This seems particularly important to smaller districts with minimal staffs for whom monthly, quarter bills are difficult to send and collect, and the calculation of charges based on benefit may appear too onerous. It should be noted that general obligation bonds can only be issued if approved by the voters in the same manner as school district bonds, and it would be clear in the election proceedings that the bonds would be general obligations payable from a tax levy, rather than revenues of the system.

Ex. 4, p. 4, Mins., Senate Local Gov't Comm., March 9, 1995 (emphasis added).

This explanation largely mirrors descriptions previously used by the Montana Supreme Court to distinguish revenue bonds from general obligation bonds, to wit: "There is a long history in Montana of the financing of various projects by revenue bonds as distinguished from general obligation bonds payable out of ad valorem property tax receipts." State ex rel. Ward v. Anderson, 158 Mont. 279, 284, 491 P.2d 868, 871 (1971), quoting from Fickes v. Missoula County, 155 Mont. 258, 264, 470 P.2d 287, 290 (1970).

This explanation also fully comports with the requirements of school district bonding statutes incorporated by reference in Mont. Code Ann. § 7-13-2331(2). As noted previously, Mont. Code Ann. § 20-9-437(1) pledges the "full faith, credit, and taxable resources of a school district" for the repayment of general obligation bonds issued by a school district, and Mont. Code Ann. § 20-9-142 requires the board of county commissioners to "fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance" a school district's final budget, including the debt service fund for the payment of school bonds.

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THEREFORE, IT IS MY OPINION:

General obligation bonds issued by a county water and sewer district are payable by levy on the taxable value of all real and personal property within the district.

Very truly yours,

MIKE McGRATH
Attorney General

mm/bgn/jym