

March 5, 2009

Granite County Board of Commissioners
P.O. Box 925
Philipsburg, MT 59858-0925

Re: Mill Levies

Dear Commissioners:

The Attorney General has asked me to respond to your letter of December 16, 2008. Your question involves Mont. Code Ann. § 15-10-420, as amended in 2001, which places certain limits on the number of mills a local “governmental entity” may levy in any given year. Montana Code Annotated § 15-10-420 generally limits a governmental entity’s property tax levy to the number of mills required to raise the same property tax revenue as was raised in the previous year, indexed for inflation.

Section 420 also contains a “carry forward” provision that addresses the situation in which a governmental entity does not levy the entire number of mills necessary to raise the amount raised in the prior year. In that situation, section 420 allows the governmental entity to carry forward the cap from the prior year to subsequent years. The net effect is that the governmental entity’s mill limit does not decrease below the maximum allowed in any year.

You ask what effect this statute has on the property tax levy a county must impose for a newly-created hospital district under Mont. Code Ann. § 7-34-2133, which requires the board of commissioners to “fix and levy a tax on the taxable value of all taxable property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees” as necessary to fund the hospital budget. Because this issue is controlled by a prior opinion of this office, a letter of advice, rather than a formal opinion, is appropriate in response to your letter.

Our office addressed this issue shortly after the 2001 amendments to Mont. Code Ann. § 15-10-420 became effective. In 49 Op. Att’y Gen. No. 5 (2001) (copy enclosed), the City of Great Falls presented several questions under Mont. Code Ann. § 15-10-420 relating to the city airport. One of the issues presented was whether the limit on mills

was calculated by reference to specific programs for which mills could be levied, or by reference to the total number of mills levied by the city for all purposes.

In response, we held that section 420 limited the total number of mills levied by the county, regardless of the purpose for which it levies the mills. Attorney General McGrath stated:

In calculating the City's mill levy for this year, it does not matter whether the City levied two mills, or for that matter any mills, for airport purposes under Mont. Code Ann. § 67-10-402(1) in any prior year. Under [section 420], the City is authorized to levy a property tax for the airport, and as long as the City's total property tax collections covered by the mill levy cap in Mont. Code Ann. § 15-10-420(1)(a) do not exceed those assessed in the prior year, the airport levy is permissible. It is simply not relevant under this statutory scheme whether the City levied a tax under Mont. Code Ann. § 67-10-402(1) in any prior year.

The "carry forward" provision found in Mont. Code Ann. § 15-10-420(1)(b) likewise does not depend on how many mills, if any, the City chooses to devote to airport purposes in any year. This subsection allows the City, if it finds itself able to fund its operations without levying the full number of mills allowed by subsection (1)(a), to hold in reserve for future years the authority to levy the difference between the number of mills allowed and the number actually levied. The "carry forward" authority is not calculated on the basis of the amount budgeted or the number of mills needed to finance any specific government function. Rather, it is calculated with reference to the whole amount of funds raised by property taxes, subject to the exceptions provided in the statute, without reference to how the money might actually have been spent in the prior year.

In this case, I respectfully disagree with your assumption that the "governmental entity" for purposes of calculating the mill limit is the hospital district. Montana Code Annotated § 7-34-2133 requires "the board of county commissioners" to levy the tax, not the hospital district board, just as the tax levy for the Great Falls airport was levied by the city commission, not by the airport board. Since the taxing authority in § 7-34-2133 is "subject to 15-10-420," it cannot be argued that the mandatory nature of the hospital levy somehow exempts the hospital levy from the mill levy limits.

I would also point out that under the 2001 amendment to section 420, the "amount of taxes levied" in 1996 is no longer a limiting factor. The 2001 amendment to section 420

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specifically modifies the reference to 1996 in Mont. Code Ann. § 15-10-402. Amended section 420 provides that the limiting factor is now the tax revenue generated in the prior year.

Thus the Board of Commissioners may levy the maximum mills allowed by section 420. If a hospital district exists or is created, the County must satisfy its obligation under Mont. Code Ann. § 7-34-2133 either from the funds made available by the number of mills levied under Mont. Code Ann. §15-10-420, or from an additional amount approved by the voters under Mont. Code Ann. § 15-10-425.

I hope this is responsive to your question. This letter may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS TWEETEN
Chief Civil Counsel

cdt/jym