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VOLUME NO. 45

OPINION NO. 4

CITIES AND TOWNS - Authority to assess fee for fire hydrant water service provided to rural improvement district;
COSTS - Authority of municipality to assess fee for fire hydrant water service provided to rural improvement district;
COUNTIES - Authority of municipality to assess fee for fire hydrant water service provided to rural improvement district;
COUNTIES - Authority to charge rural improvement district maintenance fund with fee assessed by municipality for fire hydrant water service;
FEES - Authority of county to charge rural improvement district maintenance fund with fee assessed by municipality for fire hydrant water service;
RURAL SPECIAL IMPROVEMENT DISTRICT - Authority of municipality to assess fee for fire hydrant water service provided to;
RURAL SPECIAL IMPROVEMENT DISTRICT - Authority to charge maintenance fund with fee assessed by municipality for fire hydrant water service;
MONTANA CODE ANNOTATED - Sections 7-12-2102(1), 7-12-2161(2), 7-12-2162, 7-12-4102(d)(iii)-(iv), 7-13-4305, 7-13-4311, 7-13-4312, 69-7-201.

- HELD: 1. When a rural improvement district requests that a municipal water utility provide water service to fire hydrants owned by the district, the municipality is authorized to provide that service and assess a charge for it.
2. Payment of a fire hydrant fee charged to a rural improvement district for provision of water to hydrants owned by the rural improvement district may be made from the district's maintenance fund.

April 12, 1993

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

Dear Mr. Paxinos:

You have requested my opinion concerning two questions which I have rephrased as follows:

April 12, 1993

1. May a municipal water utility assess an annual fire hydrant fee for supplying water to fire hydrants outside the city limits which are owned by a rural improvement district?
2. If the city may assess such a charge, may the payment be made from the rural improvement district's maintenance fund?

A number of rural improvement districts [RID's] have been formed in Yellowstone County [the County] which obtain water for fire hydrants from the City of Billings Public Utility Department [the City]. The RID's, which own the hydrants, have requested the water service from the City, for which the City assesses a fixed, annual "fire hydrant water service fee" in accordance with a fee schedule set by the Billings City Council. You have also mentioned that the County's board of commissioners has established a fire service area denoted the Billings Urban Fire Service Area (BUFSA), which has contracted with the City to provide various fire protection services. All of the RID's lie within the BUFSA boundary and outside the Billings city limits. Although the BUFSA contract particularly denotes the services to be provided by the City, water service to fire hydrants owned by the RID's is not specifically mentioned.

The County's position is that the City may not assess a fire hydrant water service fee in addition to the annual fee paid the City under the BUFSA contract, and the City maintains that there was never any intention that it would provide a fire hydrant water service under the BUFSA contract.

I cannot address the issue of whether the contract allows the City to assess this fee, because it would require me to resolve disputed issues of fact relating to the intention of the parties to the contract. However, in the interest of providing some guidance regarding the issues raised, I have addressed your remaining questions as rephrased above.

A city that operates a municipal water system is empowered to furnish water to "any person, factory, or other industry located outside the corporate limits of such city or town." MCA § 7-13-4311. MCA § 7-13-4312 further provides:

The city council of any city within Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of such city at

reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission. Such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

MCA § 7-13-4305 provides that no person, firm, or corporation may use a municipal water system "unless they pay the full and established rate for said service." Finally, MCA § 69-7-201 requires a municipal utility to adopt rules governing the rates for utility service, and the extension of service to users "outside the municipal boundaries." I conclude that when an RID requests that a municipal water utility provide water service to fire hydrants owned by the RID, the municipality is authorized to provide that service and to assess a charge for it.

Your second question is whether the RID may pay out of its maintenance fund a fire hydrant fee assessed when it uses a municipal water service to supply water to its fire hydrants. The Legislature has provided that an RID may be created for the purpose of constructing water mains and hydrants. MCA §§ 7-12-2102(1) and -4102(d)(iii)-(iv). The board of commissioners must levy an assessment against property holders in the RID "equal to the whole cost of maintaining, preserving, or repairing ... improvements within the district." MCA § 7-12-2161(2). Money collected from the assessment must be deposited in the RID's maintenance fund, and may be used "to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose." MCA § 7-12-2162. You have suggested that a fee for supplying the RID hydrants with water could not be paid out of the RID's maintenance fund because such a fee does not constitute "maintenance, preservation, or repair" of the fire hydrant improvements.

I have been unable to locate any Montana cases or Attorney General's Opinions which construe the phrase "maintenance, preservation, or repair" as used in this statute. However, while the statute does not define the term "maintenance," rules of statutory construction dictate that the term must not be construed in isolation, particularly when to do so would lead to an absurd result.

"[T]he cardinal principle of statutory construction is that the intent of the legislature is controlling." In construing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from the wording of any one particular section or sentence, but only from a consideration of the whole. It is out [sic] duty to interpret individual sections of an act in such a manner as to insure coordination with the other sections of the act.

State v. Meader, 184 Mont. 32, 36-37, 601 P.2d 386, 388-89 (1979) (citations omitted); accord State v. Magnuson, 210 Mont. 401, 408, 682 P.2d 1365, 1369 (1984) (legislation must be read as whole in ascertaining legislative intent). In applying this rule of construction, every effort should be made to secure a reasonable construction and to avoid absurd results. McClanahan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980) (when there is doubt about meaning of phrase in statute, phrase must be given reasonable construction in harmony with entire statute); Dover Ranch v. County of Yellowstone, 187 Mont. 276, 283, 609 P.2d 711, 715 (1980) (statute must be read as whole and construed to avoid absurd results). Thus, "[a] statute will not be interpreted to defeat its object or purpose, and the objects sought to be achieved by the legislature are of prime consideration in interpreting it." Dover Ranch, 187 Mont. at 284, 609 P.2d at 715.

As noted above, the Legislature has granted counties the power to create RID's outside of incorporated cities and towns for the purpose of acquiring and constructing certain improvements "in the public interest," including the construction of water mains and hydrants. MCA §§ 7-12-2102(1) and -4102(d)(iii)-(iv). Maintenance, preservation and repair of such improvements are paid for from the RID maintenance fund. Construing the term "maintenance" in MCA § 7-12-2162 as precluding payment for the cost of providing water to hydrants constructed under authority of these statutes would lead to an absurd result: fire hydrants without a supply of water.

The Supreme Court of California reached a similar conclusion in Roberts v. City of Los Angeles, 61 P.2d 323, 324 (Cal. 1936), an analogous case that involved construction of the title of a bill permitting municipalities to establish and maintain an electric street lighting system, and to assess a tax on the property benefited. The bill title provided in pertinent part:

An act to provide for the acquisition, installation, construction, reconstruction, extension, repair and maintenance by municipalities of waterworks, electric power works, gas works, lighting works, and other public works and utilities; for the assessment of the cost and expenses thereof upon the property benefited; and for the issue of improvement bonds[.]

61 P.2d at 324. Since the bill title did not refer to furnishing power to the electric lighting system, the issue before the court was whether the bill title contemplated the provision of electric current to the system. In concluding that the provision of electricity was within the bill's scope, the court stated:

The only logical inference that can flow from the language of the title is that the production and furnishing of electric current was one of the main objects and purposes conferred on cities by the

Legislature. The construction of an electric power works with no purpose or means of furnishing light would be as void of rationality as would the building of a reservoir storage system without providing any means of supplying it with water, or a locomotive without providing any means of generating steam. Reading the words "acquisition," "installation," "construction," "extension," "repair," and "maintenance," with the context of the title itself, it would seem that there can be no doubt but that the title of the act contemplated the operation of lighting works and the furnishing of electric current by that means. If this is not so, there would be no occasion to repair anything and there would be nothing of a useful character to maintain.

61 P.2d at 327.

When the applicable Montana statutes are read together, a reasonable construction is that the Legislature intended the term "maintenance" in MCA § 7-12-2162 to include provision of a supply of water to the hydrants so that they would actually constitute improvements in the public interest. I therefore conclude that the payment of a fire hydrant fee charged to an RID for provision of water to hydrants owned by the RID may be made from the rural improvement district's maintenance fund.

THEREFORE, IT IS MY OPINION:

1. When a rural improvement district requests that a municipal water utility provide water service to fire hydrants owned by the district, the municipality is authorized to provide that service and assess a charge for it.
2. Payment of a fire hydrant fee charged to a rural improvement district for provision of water to hydrants owned by the rural improvement district may be made from the district's maintenance fund.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/pdj/mlr