

DISTRIBUTED BY:
CROSBY OPINION SERVICE
2210 East 6th Ave.
Helena, MT 59601
406-443-3418

VOLUME NO. 45

OPINION NO. 22

BONDS - Authority of joint solid waste management district to issue bonds to participate in self-insurance fund;
INSURANCE - Joint solid waste management district as political subdivision;
LOCAL GOVERNMENT - Joint solid waste management district as political subdivision;
MUNICIPAL CORPORATIONS - Joint solid waste management district as political subdivision;
SOLID WASTE - Joint solid waste management district as political subdivision able to participate in self-insurance plan;
MONTANA CODE ANNOTATED - Sections 2-9-101, 2-9-211, 2-9-212, 7-11-101, 7-13-241 (1989), 7-13-301 to -311 (1991), 39-71-403, 39-71-2102, 75-10-103, 75-10-112;
MONTANA LAWS OF 1991 - Chapter 770;
OPINIONS OF THE ATTORNEY GENERAL- 44 Op. Att'y Gen. No. 28 (1992), 43 Op. Att'y Gen. No. 68 (1990), 38 Op. Att'y Gen. No. 75 (1980).

- HELD: 1. A joint solid waste management district is a political subdivision for purposes of participating in the self-insurance programs authorized by Mont. Code Ann. § 2-9-211.
2. A joint solid waste management district does not have the authority to issue bonds for the purpose of establishing a workers' compensation self-insurance fund.

May 19, 1994

Mr. Seldon Frisbee
Cut Bank City Attorney
113 East Main
Cut Bank, MT 59427

Dear Mr. Frisbee:

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

1. Is a joint solid waste management district a political subdivision with the statutory power to self-insure under Mont. Code Ann. § 2-9-211?

2. Does a joint solid waste management district have the authority to issue bonds for the purpose of establishing a workers' compensation self-insurance fund?

The City of Cut Bank is a member of the Northern Montana Joint Refuse District [hereinafter "district"] which was formed in 1990 and composed of four municipalities and the portions of three counties which were not within the boundaries of the Blackfeet Indian Reservation. The district was originally formed as a joint refuse disposal district under Mont. Code Ann. § 7-13-241 (1989), but later recognized as a joint solid waste management district under Mont. Code Ann. §§ 7-13-301 to -311 (1991).

The district is considering a number of options for obtaining cost-effective insurance coverage. One option is participation in the insurance programs organized and administered through the Montana Municipal Insurance Authority. The Montana Municipal Insurance Authority [MMIA] is an entity organized pursuant to the Interlocal Cooperation Act, Mont. Code Ann. tit. 7, ch. 11, pt. 1, and currently composed of 85 cities and towns. The MMIA provides two types of self-insurance coverage for its members: liability insurance and workers' compensation insurance. The liability self-insurance plan is authorized by Mont. Code Ann. § 2-9-211, which allows "all political subdivisions of the state to procure insurance separately or jointly with other subdivisions." See 38 Op. Att'y Gen. No. 75 (1980) (counties may participate in self-insurance program pursuant to interlocal agreement). A workers' compensation self-insurance plan for cities and towns and other "public corporations," except state agencies, is authorized by Mont. Code Ann. § 39-71-403(3).

In order to be able to participate in the liability self-insurance program and join the MMIA, the district must be a "political subdivision" as that term is used in Mont. Code Ann. § 2-9-211. Under Mont. Code Ann. § 2-9-101, a "political subdivision" as used in parts 1, 2, and 3 of chapter 9 is broadly defined as any "county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation." (Emphasis added.) Your first question is whether the district can be considered such a "political subdivision."

Two previous Attorney General's Opinions held that a solid waste management district (then refuse disposal district) was not a political subdivision for purposes of the Municipal Finance Consolidation Act [MFCFA]. See 43 Op. Att'y Gen. No. 68 at 256 (1990) (refuse disposal district not political subdivision); 44 Op. Att'y Gen. No. 28 (1992) (solid waste management district not

45 Op. Att'y Gen. No. 22
May 19, 1994
Page 3

political subdivision). In these opinions, a refuse disposal district was not considered a political subdivision because it did not have an independent governing body which was capable of exercising authority separate from the county commissioners who created it. 44 Op. Att'y Gen. No. 28; 43 Op. Att'y Gen. No. 68 at 259.

In 1991, the legislature significantly amended the laws relating to solid waste management districts. See 1991 Mont. Laws, ch. 770. The legislature expressly stated that a "joint solid waste district is a political subdivision of the state for the purposes of the Municipal Finance Consolidation Act of 1983 as provided in 17-5-1602 and for solid waste management services as provided in 75-10-112." Mont. Code Ann. § 7-13-301. Under this language, joint districts were specifically excluded from the effect of the prior Attorney General's Opinions which held that a refuse district was not a political subdivision for MFCA purposes. The legislature also substantively vested a joint district with plenary powers which could be exercised independent of the governing bodies of the cities or counties that made up the district. See Mont. Code Ann. § 7-13-305(5) (board of joint district unconditionally has all powers listed in Mont. Code Ann. § 75-10-112). Because it has such broad independent authority, a joint district must be considered a political subdivision within the meaning of Mont. Code Ann. § 2-9-211.

Your second question arises from an MMIA requirement that the participating political subdivisions have the statutory authority to issue bonds in order to establish and maintain a workers' compensation self-insurance reserve fund. The MMIA further requires that the bonds must be supported by an annual tax levy. Currently, the MMIA workers' compensation program issues bonds on behalf of each participating entity for the purpose of creating and maintaining a self-insurance reserve fund. The MMIA's authority to issue such bonds is necessarily derived from the authority of each participating member to issue bonds for the purpose of establishing the self-insurance fund. Accordingly, you ask whether the district has the statutory authority to issue bonds for the establishment of a workers' compensation self-insurance fund payable from an annual property tax levied within the boundaries of the joint district.

Under Mont. Code Ann. § 39-71-403(2), a "public corporation," other than a state agency, may elect, separately or jointly with any other public corporation other than a state agency, to participate in workers' compensation plan No. 1, plan No. 2 or plan No. 3. Workers' compensation plan No. 1 describes the procedures and requirements that must be met by an employer who wants to provide self-insured workers' compensation benefits for employees. See Mont. Code Ann. §§ 39-71-2101 to -2108. Under Mont. Code Ann.

§ 39-71-403(3), a public corporation that elects plan No. 1 may establish a fund to pay its workers' compensation liabilities. Further, the public corporation is given the express authority to "issue and sell its bonds and notes for the purpose of establishing, in whole or in part," a self-insurance workers' compensation fund. Mont. Code Ann. § 39-71-403(3)(b).

The definition of a "public corporation" for purposes of Mont. Code Ann. § 39-71-403 includes "any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village." Mont. Code Ann. § 39-71-116(22). Conspicuously absent from this definition is a generic, catch-all phrase which would include "local government units" or "political subdivisions" within the meaning of the term "public corporation." Thus, a political subdivision such as a joint solid waste management district does not have the specific or express authority under this statute to participate in plan No. 1 or to issue bonds to establish a workers' compensation self-insurance fund.

You suggest nonetheless that the bonding authority in Mont. Code Ann. § 2-9-211 could be construed to allow issuance of bonds to establish a workers' compensation self-insurance fund. Mont. Code Ann. § 2-9-211 authorizes a political subdivision to self-insure and issue bonds to establish a self-insurance fund, but proceeds from the self-insurance fund are limited to claims arising under title 2, chapter 9, parts 1 to 3. See Mont. Code Ann. § 2-9-211(3). Thus, the bonding authority in Mont. Code Ann. § 2-9-211 may not be used as a basis for issuance of bonds for establishment of a reserve fund to guarantee payment of workers' compensation claims.

You further suggest that either Mont. Code Ann. § 7-13-308 or Mont. Code Ann. § 7-13-309 contains the requisite authority for establishment of a workers' compensation self-insurance fund through issuance of bonds. Mont. Code Ann. § 7-13-308 allows the joint district to issue revenue bonds. The MMIA has indicated that it requires its members to have the authority to issue bonds payable through tax proceeds and the authority to issue revenue bonds would presumably not meet this requirement. Mont. Code Ann. § 7-13-309 allows a joint solid waste management district to issue bonds supported by tax proceeds, providing in pertinent part:

Upon approval of the board of directors of the joint district, a joint district may borrow money by the issuance of its bonds to:

- (a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;
- (b) provide an adequate working capital; and
- (c) pay costs related to the planning, designing, and financing of a solid waste management system.

This section does not specifically allow issuance of bonds to establish a workers' compensation self-insurance reserve fund. It grants a joint district the authority to issue bonds to provide "working capital" or to pay the costs of "financing" a solid waste system. Neither of these provisions authorizes the issuance of long-term obligations associated with establishing and maintaining a workers' compensation self-insurance fund.

In the accounting context, the term "working capital" means the money necessary to meet current operating expenses: it is "'the excess of a [business's] current assets over its liabilities.'" Blue Cross & Blue Shield of Delaware v. Elliot, 479 A.2d 843, 848 (Del. Super. Ct. 1984), quoting Finney, Principles of Accounting at 55. Working capital essentially means the operating cash necessary to meet current liabilities and indicates a short-term debt. It does not encompass the establishment of a reserve fund which would require incurring a long-term obligation, and which would potentially result in a savings earned by reducing costs to the district.

Nor does the phrase "cost of financing" indicate that the joint district has the bonding authority to create a workers' compensation self-insurance fund. McQuillin has explained how bonding authority for one purpose may not be construed as authorizing issuance of bonds for another purpose:

The power conferred by a law relating to the issuance of bonds is to be construed as restricted to the bonds authorized. Thus, authority to issue building bonds does not include bonds for hospitals or garbage reduction plants; authority to issue bonds for manufacturing and industrial purposes does not authorize issuance of bonds for service businesses. . . .

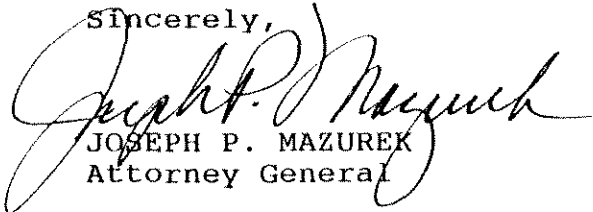
McQuillin, Municipal Corporations § 43.22. Similarly, the authority to issue bonds for planning, designing or financing a solid waste management system may not be used as a basis for issuance of bonds to establish and maintain a workers' compensation self-insurance fund.

My conclusion is consistent with the legislative history of how cities, counties, and school districts acquired the authority to issue bonds for a workers' compensation self-insurance fund. The legislative history of Mont. Code Ann. § 39-71-403(2) and (3) indicates that cities, counties and school districts believed, on advice of bond counsel, that specific bonding authority was necessary in order to issue bonds for the creation of a workers' compensation self-insurance fund. Minutes, House Committee on Labor and Employment Relations, Testimony of Gordon Morris on SB 285, Mar. 14, 1989, at 2. Given that specific statutory authority was necessary for cities, counties and school districts to be able to establish a workers' compensation self-insurance fund, joint solid waste management districts must similarly have such authorization.

THEREFORE, IT IS MY OPINION:

1. A joint solid waste management district is a political subdivision for purposes of participating in the self-insurance programs authorized by Mont. Code Ann. § 2-9-211.
2. A joint solid waste management district does not have the authority to issue bonds for the purpose of establishing a workers' compensation self-insurance fund.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/elg/bjh