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VOLUME NO. 46

OPINION NO. 8

ANNEXATION - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;  
CITIES AND TOWNS - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;  
FIRE DISTRICTS - Effect of annexation of district territory on obligation to repay loan incurred by district;  
INTERGOVERNMENTAL COOPERATION - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;  
MONTANA CODE ANNOTATED - Sections 7-2-4716(2), 7-12-4102(2)(e)(ii), 7-33-2109, -2121, -2122, -2124, -2129;  
MONTANA LAWS OF 1991 - Chapter 459;  
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 126 (1988), 38 Op. Att'y Gen. No. 87 (1980);  
REVISED CODES OF MONTANA, 1947 - Section 11-2008.

HELD: When a city annexes territory which has been part of a rural fire district, Montana law does not allow the district to tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to the annexation.

July 21, 1995

Mr. Mike Salvagni  
Gallatin County Attorney  
615 South 16th Avenue, Room 100  
Bozeman, MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following question:

If a city annexes an area from a rural fire district, does the obligation for a loan incurred by the fire district go with the property?

Your question arises from the annexation by the City of Bozeman in March 1994 of a portion of the Sourdough Rural Fire District

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["District"] which had previously been contiguous to, but outside, the boundaries of the city. The annexed portion was owned by one Donald F. Hannah. In 1992, the District had entered into an agreement with the State Board of Investments for a loan by the Board of \$101,500 to the District for the purchase of certain equipment and facilities for the District's operations. Prior to the annexation, Hannah's annexed property was subject to tax levy to retire the District's indebtedness to the Board. You inquire whether it remains subject to levy or other charge to repay the loan after the property has been annexed to the city.

Before answering your question, I must address a preliminary issue. In the memorandum accompanying your request, you pose the question whether under current law, rural fire districts may borrow money without issuing bonds. Such power had been recognized by prior Attorney General's Opinions reasoning that the power to borrow was necessarily implied in order to ensure achievement of the purposes of creation of the rural fire district. 42 Op. Att'y Gen. No. 126 (1988), 38 Op. Att'y Gen. No. 87 (1980). In addition, this question has been definitively answered in the affirmative by HB 113, introduced in the 1995 Legislature, passed and signed by the Governor, and effective October 1, 1995. That bill amended Mont. Code Ann. § 7-33-2109, the statute authorizing rural fire districts to raise money by issuing bonds, by adding language which explicitly authorized rural fire districts to borrow money without issuing bonds or, in the words of the bill, to "pledge the income of the district . . . to secure financing necessary to procure equipment and buildings to house the equipment." However, this bill did not address your primary question.

A rural fire district has only those taxing powers provided by the legislature. 3A C. Antieau, Local Government Law § 30D.08 (1992). Mont. Code Ann. § 7-33-2109 generally limits the taxing power of a rural fire district to "all property within a rural fire district." Annexation of a portion of the district removes the annexed property from the district, since by statute rural fire districts may consist only of property "in any unincorporated territory or town," Mont. Code Ann. § 7-33-2101. It would ordinarily follow then that removal of property from the confines of a rural fire district would also remove the property from the taxing power of the district.

The legislature has, however, created exceptions to this rule, providing in Mont. Code Ann. § 7-33-2124 that property "detracted" from a district through the division process set forth in Mont. Code Ann. §§ 7-33-2122 and -2123 remains liable for "any existing warrant and bonded indebtedness." Similarly, Mont. Code Ann. § 7-33-2129 provides that property which leaves a rural fire

district through annexation "is liable for any bonded indebtedness of the rural fire district existing as of the date of the annexation," and provides a method of offsetting the municipal tax burdens by the amount of the rural fire district tax assessments. In the absence of a similar legislatively created exception--for example, for tax levies to retire indebtedness other than bonded indebtedness--I am unable to find authority for a rural fire district to levy taxes against property which is not within the boundaries of the district.

I presume that the legislature was aware of the provisions that had been made for retirement of bonded indebtedness when it enacted the recent legislation referred to above, recognizing the power of rural fire districts to incur other kinds of indebtedness. See Helena Valley Irr. Dist. v. State H'way Comm'n, 150 Mont. 192, 199, 433 P.2d 791, 794 (1967). Had the legislature intended to extend the power of rural fire districts to allow taxation to retire nonbonded debts, it could easily have so provided. The absence of such provision counsels against recognizing the power to tax annexed property for the retirement of non-bonded indebtedness.

Prior opinions have recognized that powers of rural fire districts may be implied by necessity. In 38 Op. Att'y Gen. No. 87 (1980), for example, Attorney General Greely held that rural fire districts had the implied power to borrow money without issuing bonds to finance the purchase of fire equipment, since the ultimate purpose of the creation of the district would be frustrated in the absence of the ability to purchase fire-fighting equipment. I find no need to imply the power to continue to tax property which leaves the district to retire such nonbonded loans. It is common for such loans to be secured by security interests in the property purchased with their proceeds. That is the case with the loan at issue here. Loan Agreement Between Board of Investments of the State of Montana and Sourdough Rural Fire District, Ex. H. Moreover, when the 1980 opinion was issued, rural fire districts lacked the power to create bonded indebtedness. That power has since been conferred by the legislature. Mont. Code Ann. § 7-33-2109(2).

There is no reason to believe that rural fire districts cannot secure financing for their equipment and building needs through one of these two methods in the absence of the power to tax annexed property to retire nonbonded indebtedness. If that becomes the case, the legislature has the power to enact corrective statutes. I therefore conclude that the absence of statutory authority to tax annexed property to retire nonbonded debt precludes a finding that the authority exists.

A second issue is raised by Mont. Code Ann. § 7-2-4716(2), which states in part:

Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

At this point we must ask whether a rural fire district is a "special service district." The term "special service district" is not defined in either statutory or case law in Montana. Applying the doctrine of ejusdem generis, the term "special service district" must be defined by reference to the examples given in the defining statute. County of Chouteau v. City of Fort Benton, 181 Mont. 123, 126, 592 P.2d 504, 506 (1979). The examples contained within the statute refer to improvements of the capital investment type, which would not include fire protection. City of Butte v. School Dist. No. 1, 29 Mont. 336, 341, 74 P. 869, 871 (1904); Mont. Code Ann. § 7-12-4102(2)(e)(ii). Although the legislative history is not explicit on this point, the lengthy consideration and eventual rejection of a proposed amendment to this statute designed to address the problems of annexations of territory from fire districts leads me to conclude that the 1974 legislature did not intend that the section of the statute discussed above should apply to rural fire districts. Mins., Senate Local Gov't Comm., Feb. 21, 1974, at 1-3, Feb. 28, 1974, at 1-3.

A third issue involves Mont. Code Ann. § 7-33-2124, which regulates the distribution of assets and liabilities following the division of a rural fire district. However, it does not appear that the annexation of rural fire district territory fits what the legislature intended by the term "division." The history and context of Mont. Code Ann. § 7-33-2124 reveal that when a rural fire district is "divided," the original district becomes two or more districts. Mont. Code Ann. §§ 7-33-2121 and -2122; Rev. Codes Mont. § 11-2008 (1947). Both before and after annexation, on the other hand, there is but one district--albeit a smaller one after a successful annexation. Also, it is my understanding that the statutory procedure for the division of a rural fire district is not usually followed in cases of municipal annexation. I therefore conclude that Mont. Code Ann § 7-33-2124 has no application to property which leaves a district through annexation.

Finally, an approach to which you devote considerable attention is best summarized in your statement:

If the obligation to pay the loan does not go with the annexed property, then there is an unconstitutional interference with the Sourdough Fire District's right to contract.

Insofar as this approach seeks a determination concerning the constitutionality of the statutory scheme, I decline to address that issue. A strong presumption exists that statutes are constitutional and, as Attorney General, I am routinely called upon to defend the validity of state statutes. It has, therefore, been my usual practice to decline consideration of questions involving the constitutionality of state statutes, and I do so here.

In any event, I would be hard-pressed to find that the annexation of a portion of the District without providing that the annexed area remains subject to tax for District purposes impairs the obligation of the loan contract between the District and the Board of Investments. I note initially that the loan documents make no warranty as to the identity or amount of property which would be subject to taxation by the district to retire the loan balance. Moreover, the loan documents expressly provide that the District's obligation to repay the loan

shall be absolute and unconditional . . . and shall not be . . . modified in any manner or to any extent whatsoever, including, without limiting the generality of the foregoing, any . . . change in the laws of the United States or of the State.

Loan Agreement between Board of Investments of the State of Montana and Sourdough Rural Fire District, § 5.04. A reduction in the amount of property subject to tax to retire the loan would not in any way diminish or change the responsibilities of the parties under the loan contract. As far as the loan contract is concerned, the District would remain obligated for the full amount of the loan.

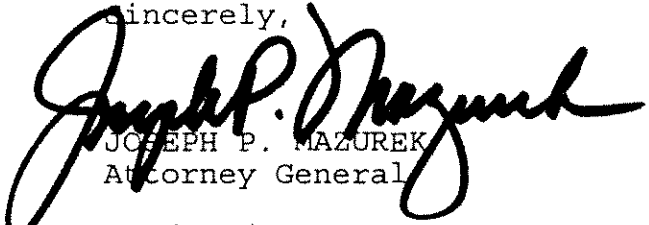
State ex rel. Savings Bank v. Barret, 25 Mont. 112, 63 P. 1030 (1901), the case on which you rely on this point, recognizes that a statutory impairment of a contract occurs when "a law relieves the parties from the moral obligation of performing the original stipulations of the contract and prevents their legal enforcement." 25 Mont. at 119 (citations omitted). Under the terms of the contract at issue here, no statute would operate to relieve the District of its obligation to repay the loan, and accordingly no impairment of its contract could be found.

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THEREFORE, IT IS MY OPINION:

When a city annexes territory which has been part of a rural fire district, Montana law does not allow the district to tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to the annexation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Joseph P. Mazurek". The signature is written over the typed name and title.

JOSEPH P. MAZUREK  
Attorney General

jpm/rfs/kaa