46 Op. Att'y Gen. No. 27

COUNTIES - Allocation of Taylor Grazing Act funds to elementary school equalization account;
GRAZING DISTRICTS - Allocation of Taylor Grazing Act funds to elementary school equalization account;
SCHOOLS - Allocation of Taylor Grazing Act funds to elementary school equalization account;
STATUTES - Construction without reference to rules of construction when legislative intent clear;
MONTANA CODE ANNOTATED - Sections 17-3-221, -222, 20-9-331;
MONTANA LAWS OF 1971 - Chapter 5, section 262;
MONTANA LAWS OF 1949 - Chapter 96;
MONTANA LAWS OF 1939 - Chapter 102;
MONTANA LAWS OF 1937 - Chapter 55;
MONTANA LAWS OF 1935 - Chapter 146, section 2;
REVISED CODES OF MONTANA, 1947 - Section 79-205;
REVISED CODES OF MONTANA, 1935 - Political Code §§ 1201.1, 1202;
UNITED STATES CODE - 43 U.S.C. § 315i.

HELD: Pursuant to Mont. Code Ann. §§ 17-3-222 and 20-9-331(2)(a), a county must allocate its share of funds provided by the federal government to the State under the Taylor Grazing Act, 43 U.S.C. § 315i, 50 percent to the county general fund and 50 percent to the equalization account of the elementary BASE funding program.

December 31, 1996

Mr. Jon D. Noel, Director
Department of Commerce
P.O. Box 200501
Helena, MT 59620-0501

Dear Mr. Noel:

You have submitted a letter setting forth certain facts pertaining to the allocation of certain funds by Phillips County. I have chosen to consider your letter as a request for an opinion on the following question:

Pursuant to Mont. Code Ann. §§ 17-3-222 and 20-9-331(2)(a), must a county allocate its share of funds provided by the federal government to the State under the Taylor Grazing Act, 43 U.S.C. § 315i, 50 percent to the county general fund and 50 percent to the equalization account of the elementary BASE funding program?

Your letter informs me that 50 of Montana's 56 counties contain federal lands leased for grazing purposes under the Taylor Grazing Act, 43 U.S.C. §§ 315 to 315o-1. The Taylor Grazing Act authorizes the federal government to lease federal lands for grazing purposes. 43 U.S.C. § 315i makes provision for the distribution of a portion of the fees collected to the States "to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which [the lands which produced the fees] are located." The percentage of the fees thus allocated varies from 12½ percent for grazing district lands to 50 percent for "vacant, unappropriated, and unreserved lands of the public domain . . . so situated as not to justify their inclusion in any grazing district." See 43 U.S.C. § 315m.

Your letter informs me that a routine audit of the financial records of Phillips County produced a notation by the auditor that the county appeared to be allocating its share of the Taylor Grazing Act funds in a manner inconsistent with state statutes by allocating 50 percent of the county's share to the county school transportation fund instead of to the elementary BASE equalization account, as required by Mont. Code Ann. § 20-9-331. In response, Phillips County indicated its belief that the state statutes which allocate the Taylor Grazing Act funds to the BASE equalization account are inconsistent with the requirements of 43 U.S.C. § 315i, and its intention to continue to allocate the funds in the manner it had previously.

Upon passage of the Taylor Grazing Act in 1934, the Montana legislature enacted the predecessors to Mont. Code Ann. §§ 17-3-221 and -222, which directed the allocation of Taylor Grazing Act funds received from the United States Treasury. Section 17-3-221 establishes the state treasurer as the custodian of Taylor Grazing Act funds, and section 17-3-222, as originally enacted, provided:

It shall be the duty of the State Treasurer to properly apportion and allocate these moneys to the County Treasurers, who shall allocate and pay all such moneys as follows, Fifty percent (50%) to the county general fund and fifty percent (50%) to the common school fund of the county.

1935 Mont. Laws, ch. 146, § 2. The statute was amended in both the 1937 and 1939 legislative sessions to change the allocation formula by adding provisions allocating some portion of the Taylor Grazing Act funds to a county "special grazing fund." See 1939 Mont. Laws, ch. 102; 1937 Mont. Laws, ch. 55. In 1949, the statute was amended yet again to return to the originally enacted allocation formula which section 17-3-222 provides today: 50 percent to the county general fund and 50 percent to the "common school fund of the county." 1949 Mont. Laws, ch. 96.

It seems likely that the "common school fund" referred to in the statute as enacted in 1935 and as amended in 1949 is that provided in Rev. Codes Mont. 1935, Political Code § 1202, which required each county to levy a tax of between six and eight mills for the support of the "common schools," which fund was to be expended in addition to the state equalization aid then provided by Rev. Codes Mont. Political Code § 1201.1. This "common school fund" ceased to exist as a separate accounting entity in 1971 when the legislature enacted a massive revision of the laws relating to public schools. 1971 Mont. Laws, ch. 5. In this revision, the legislature created the "foundation program," which established the breakdown between state and locally raised funds to support the public schools. See Helena Elem. Sch. Dist. v. State, 236 Mont. 44, 47-48, 769 P.2d 684, 686 (1989) (describing the foundation program). Chapter 5, section 262 of the 1971 Montana Laws required the counties to levy a tax of 25 mills or less to support the counties' share of the foundation program. To the funds raised by this tax levy, the statute required in subsection (2) that the funds transferred to the State under the Taylor Grazing Act and allocated to "the common school fund" under what is now Mont. Code Ann. § 17-3-222 be added. This statute was codified as Mont. Code Ann. § 20-9-331 upon the recodification of the Montana statutes in 1978.

In 1993, the legislature again revised the funding of Montana public schools in response to a lengthy bout of litigation over the constitutionality of the foundation program. The 1993 amendments adopted the "base amount for school equity" or "BASE" system of school funding. Amendments to section 20-9-331 substituted the elementary BASE program for the foundation program but otherwise left the treatment of the Taylor Grazing Act monies unchanged, i.e., they were added to the amounts raised by local property taxes to support the local share of the cost of maintaining the public schools.

The above discussion is painted with a broad brush, and it is not intended to be an exhaustive exploration of the details of the system of public school funding as it has evolved in Montana. It does, however, illustrate the Montana legislature's response to the federal authorization that the State's share of Taylor Grazing Act funds be allocated by the legislature "for the benefit of the county or counties in which [the lands producing the grazing fees] are located." 43 U.S.C. § 315i.

Phillips County argues that the later-enacted provisions of section 20-9-331 conflict with the requirement in section 17-3-222 that 50 percent of the Taylor Grazing Act funds be deposited in the "common school fund" of the county. The County contends that under the Montana Supreme Court's decision in State ex rel. Woodahl v. Straub, 164 Mont. 141, 520 P.2d 776 (1974), the BASE funding program is a state program, and the fund or funds which are thereby established for the support of the schools are not a "common school fund of the county" as contemplated by section 17-3-222.

This argument is unpersuasive because it ignores both the history of the Montana legislature's treatment of Taylor Grazing Act monies and the language of 43 U.S.C. § 315i. As noted above, the "common school fund" which was in existence when the predecessor to section 17-3-222 was enacted ceased to exist in 1971, when the legislature fundamentally changed the manner in which schools were funded. As part of that change, the legislature specifically altered the allocation of Taylor Grazing Act funds by directing "the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of Rev. Codes Mont. 1947 § 79-205 (now Mont. Code Ann. § 17-3-222)"

into the school foundation equalization account. 1971 Mont. Laws, ch. 5, § 262(2). In reconciling these two statutes, I find the legislature's intention clear. The later-enacted statute changed the allocation previously made, directing into the foundation program equalization account the portion of the Taylor Grazing Act funds which had previously been designated for the "common school fund of the county." In my opinion, the statutes do not conflict, since the clear intention of section 20-9-331 is to override the previously enacted allocation.

Phillips County argues that section 17-3-222 is the more specific statute and it should control under the canon of statutory construction that the specific statute supersedes the more general one. See, e.g., Mosely v. Lake County Justice Court, 256 Mont. 206, 845 P.2d 732 (1993). I find this rule inapplicable here for two reasons. First, it is a rule of statutory construction, and as such it comes into play only when the language used by the legislature is so unclear that the legislature's intention cannot be discerned from the terms of the statute. Montana Dep't of Rev. v. Dray, 266 Mont. 89, 879 P.2d 651 (1993). For the reasons expressed above, I do not find the statutes ambiguous. Rather, the legislature's intention to change the allocation is clear from the face of section 20-9-331. There is therefore no need to resort to rules of construction here. Second, even if the statutes were ambiguous, I find that neither is the more specific. Both refer directly to the allocation of the county's share of funds received by the State under the Taylor Grazing Act, the later act by specific reference to those funds previously allocated under what is now section 17-3-222. Since they are equally specific in this regard, the rule argued for by the county would be of no help even if it were applicable.

The county further points to the existence of at least two funds that are solely for the benefit of the county schools--a retirement fund and the county transportation fund. The apparent point of this observation is that even though the specific "common school fund of the county" referred to in section 17-3-222 as it was enacted in 1935 may have ceased to exist, there remain County school funds that could be considered to be "common school funds" under the language of section 17-3-222. But this argument overlooks the clear effect of the later enactment of section 20-9-331. As noted above, the later statute clearly states the legislature's intent that the Taylor Grazing Act funds previously designated for the "common school fund" under section 17-3-222 were henceforth to be deposited in the foundation program, and later the elementary BASE program, account. Even if "common school funds" still exist, the legislature has made plain its intention that they no longer receive the allocation of these funds.

The only remaining question is whether, by directing the Taylor Grazing Act funds into what is now the elementary BASE equalization account, the legislature has violated the federal requirement that the funds be allocated by the state legislature "for the benefit of the county or counties in which [the lands producing the fees] are located." I have found no case law interpreting this language. Its intent seems to be to confer broad discretion on the state legislatures in determining how Taylor Grazing Act funds are to be allocated. This is apparent from the language "to be expended *as the State legislature may prescribe* for the benefit of the county." (Emphasis added.) Even assuming, arguendo, as the Montana Supreme Court found in Straub with reference to the foundation program, that the local property tax supporting the BASE equalization program is a "state tax" rather than a "local tax," this fact would beg the question. The issue is not whether the property tax supporting the equalization account is a state tax or a county tax, but rather whether the legislature could have concluded that the deposit of the funds into that account produces the required "benefit" for the county.

Section 20-9-331 provides that the Taylor Grazing Act funds, together with other funds generated under state and federal law, are in effect credited to the support of the elementary schools in the county before the calculation is made as to how much of the 33-mill BASE tax levy is remitted to the State for equalization purposes. Under 43 U.S.C. § 315i, the only limitation on the legislature's expenditure of the Taylor Grazing Act funds is that they be expended "for the benefit of" the county in which the fees were raised. The legislature's judgment in this case that this allocation of funds benefits the county in which the grazing fees were generated is not an unreasonable one. Because I am convinced that the legislature's discretion in assessing the benefits to the county is broad, I conclude that this allocation satisfies the requirements of 43 U.S.C. § 315i.

THEREFORE, IT IS MY OPINION:

Pursuant to Mont. Code Ann. §§ 17-3-222 and 20-9-331(2)(a), a county must allocate its share of funds provided by the federal government to the State under the Taylor Grazing Act, 43 U.S.C. § 315i, 50 percent to the county general fund and 50 percent to the equalization account of the elementary BASE funding program.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/cdt/dm