

47 Op. Att'y Gen. No. 6

CITIES AND TOWNS - Property in city subject to city and county tax levy for joint city-county library;
COUNTIES - Property in city subject to city and county tax levy for joint city-county library;
INTERGOVERNMENTAL COOPERATION - City and county agreement that property in city subject to city and county tax levy;
LIBRARIES - Property in city subject to city and county tax levy for joint city-county library;
MONTANA CODE ANNOTATED - Sections 7-14-2501(2), 15-10-402, 22-1- 303, -304, -313 , -316, - 316(2), (3);
OPINIONS OF ATTORNEY GENERAL -46 Op. Att'y Gen. No. 19 (1996)

HELD:

A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

July 10, 1997

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Dear Mr. Becker and Ms. DePuy:

You have requested my opinion on a question which I have phrased as follows:

If a city and a county operate a joint library pursuant to Mont. Code Ann. § 22-1-316, are both the city and the county authorized to levy taxes on property within the city to operate the joint city- county library?

The City of Livingston owned and operated a city library which was funded by the 7-mill levy authorized by Mont. Code Ann. § 22-1-304. Several years ago, the city entered into an agreement with Park County pursuant to Mont. Code Ann. § 22-1- 316 to operate a joint city-county library. Prior to the enactment of Initiative 105 (Mont. Code Ann. § 15-10-402), the county had levied 2.5 mills of the 5 mills authorized by § 22-1- 304. Under the terms of the library agreement, the 2.5 mills levied by the county were levied only on county property located outside of the city.

You state that the current mills being levied by both units of local government do not meet the library's current operating expenses. The existing library agreement is about to expire and you are renegotiating a new one. A proposal has been made to eliminate the contractual provision which precludes the county from levying 2.5 mills on county property within the city. In that event, the city property would be subject to both the county and city levies to support the same library. You ask whether imposing both levies on the city property results in impermissible double taxation.

Double taxation occurs when "the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority." *Lake Havasu City v. Mohave County*, 675 P.2d 1371, 1381 (Ariz. Ct. App. 1983); see also 84 C.J.S. §§ 39, 40. Under this definition, there is no double taxation when two different local government entities impose a tax. With respect to your question, there could be no double taxation because the county and the city are two separate taxing jurisdictions.

McQuillin defines double taxation differently, highlighting a concern for uniformity within a taxing district:

In order for double taxation to exist, both taxes must be imposed for the same purpose, upon part only of the property of a particular taxing district, and if all property in a given district is taxed under valid levies the result is the same as if a single levy for the total amount were imposed.

McQuillin, *Municipal Corporations* § 44.23, at 106. Thus, under McQuillin's definition, double taxation would arise only if part of a taxing jurisdiction sustained a double burden for taxes. Such a definition recognizes uniformity and equity within a taxing jurisdiction. This definition is also not applicable to your question, however, because the board of trustees for a joint city-county library cannot be considered a separate and distinct taxing jurisdiction. See 46 Op. Att'y Gen. No. 19 (1996).

Neither the United States Constitution nor the Montana Constitution prohibits taxation by two different taxing jurisdictions for the same service. Article VIII, section 3 of the Montana Constitution provides that the State shall appraise, assess and equalize the valuation of all property to be taxed in the manner provided by law. While this provision has been characterized as requiring "uniformity of taxation among like taxpayers on like property," *Department of Rev. v. Puget Sound Power & Light*, 179 Mont. 255, 587 P.2d 1282 (1978), it is apparent that this statement refers to the uniform valuation of property within a classification. *Department of Rev. v. State Tax Appeal Bd.*, 188 Mont. 244, 613 P.2d 691, 693 (1980) (constitutional and statutory requirements for equalization or uniformity within a legislative classification cannot be questioned).

I have not discovered any Montana cases which prohibit the taxation by two different taxing jurisdictions to support the same service. In *State ex rel. Siegfried v. Carbon County*, 108 Mont. 510, 92 P.2d 301 (1939), the City of Red Lodge had imposed a levy for county road and street maintenance and the county had similarly imposed such a levy. Under the express terms of the controlling statute, *Rev. Codes Mont.* (1935) § 1617, if the city had imposed such a levy it was exempt from payment of the county levy. A similar exemption exists today in *Mont. Code Ann.* § 7-14-2501(2), which states that a county road levy does not apply to incorporated cities and towns which by ordinance provide for a levy of a like tax.

In *Siegfried*, a special levy was authorized over and above the standard county levy and the question was whether the city residents could be subject to this additional levy. The court recognized that it is the legislature which determines what property benefits from taxation and which may exempt city property in whole or in part from county-wide taxation. 92 P.2d at 304. As there was no legislative exemption for city residents with respect to the special levy, the levy was not considered improper double taxation. Thus, the city residents were liable for the city's road levy, as well as the county-wide road levy. The *Siegfried* court stated that the requirement for uniform and just taxation is met when the rate of assessment and taxation is uniform and just throughout a taxing district. 92 P.2d at 304; see also *Kucharski v. White*, 247 N.E.2d 428 (Ill. 1969) ("The fact that there are levies by different public authorities having practically similar powers exercised within parts of the same territory does not in and of itself constitute lack of uniformity in taxation.").

The legislature has given local governments great flexibility with respect to apportionment of expenses and funding for support of library services. A county or a city may separately establish its own public library. *Mont. Code Ann.* § 22-1-303. To support a county library, the county may levy a special tax not to exceed 5 mills on all property in the county. To support the city library, the city may levy a tax not to exceed 7 mills on property in the city. Certainly, if Park County maintained a county library separate from the Livingston city library, there is no question that the statutory scheme allows property in the city to be taxed twice for provision of library services. See also *City of Ormond Beach v. County of Volusia*, 383 So. 2d 671 (Fla. 1980). This does not mean that the city *must* support both a county library and a city library. *Montana Code Annotated* § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library.

A city and county may also join, as you have, to establish and maintain a joint city-county library. No parameters, other than maximum mill levies, have been set by the legislature with respect to the funding of such a joint enterprise. The expenses of the joint city-county library are apportioned between the city and the county "on such a basis as shall be agreed upon" in the contract establishing the joint library. *Mont. Code Ann.* § 22-1-316(2). Most importantly, *Mont. Code Ann.* § 22-1-316(3) provides:

The governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

This provision expressly allows both the city and the county having entered into a joint city-county library agreement to levy a tax as provided in Mont. Code Ann. § 22-1-304. There is no statutory exemption from the county levy for property located in the city.

In short, I have found no authority which would prohibit the county from levying 2.5 mills upon property county-wide. This is not to say that the city must agree to such a provision in the new contract. The city has the option to run its own library under § 22-1-313 and be exempt from any county levy. Also, the city and the county have broad discretion in negotiating the apportionment of expenses and funding for provision of library services.

THEREFORE, IT IS MY OPINION:

A city and a county may enter into an agreement to operate a joint city-county library under which both the city and the county may levy taxes on property located in the city.

Sincerely,

JOSEPH P. MAZUREK Attorney General

jpm/elg/dm