

47 Op. Att'y Gen. No. 11

COUNTY COMMISSIONERS - Authority to approve salaries of employees of weed board, mosquito control board, and city-county health board;

COUNTY OFFICERS AND EMPLOYEES - Salaries of employees of weed board, mosquito control board, and city-county health board;

HEALTH BOARDS AND DISTRICTS - Authority of city-county health board to set salary of health officer;

MOSQUITO CONTROL DISTRICTS - Authority of mosquito control board to set salaries of employees;

SALARIES - Authority of city-county health board, weed control board and mosquito control board to set salaries of employees;

WEED CONTROL DISTRICTS - Authority of weed control board to set salaries of employees;

MONTANA CODE ANNOTATED - Title 7, chapter 6, parts 23, 42; sections 7-1-201, -201(2)(b)(i), (4), (16), 7-6-604(5)(c), -2314(1)(a), -2315(2), -2325(1), -2348(1), 7-22-2103(1), -2109(1)(a), -2141, -2142(1), -2143, -2145, -2411, -2415(2), -2431, -2432, -2432(5), 22-1-301 to -317, 22-1-304(1), 50-2-106, -111, -111(1)(b), (c), (d), (2)(b), (c), (d), -116(1)(a), (c);

OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 35(1992), 41 Op. Att'y Gen. No. 91 (1986), 38 Op. Att'y Gen. No. 35 (1979).

HELD:

The weed board, mosquito control board, and city-county health board do not have the authority to set the level of compensation of their employees without the approval of the board of county commissioners, and, in the case of the city-county health board, also the approval of the governing body of the city.

March 23, 1998

Mr. Brant S. Light
Cascade County Attorney
Cascade County Courthouse
Great Falls, MT 59401

Dear Mr. Light:

You have requested my opinion on the following question:

Does the Board of County Commissioners have authority to set salary increases for employees of the local Weed and Mosquito Management District and the City-County Health Department (local health board)?

Resolution of the question involves a detailed analysis of the statutes creating and granting powers to these boards, as well as the funding and budgeting procedures for each. It should be noted that statutory powers differ from board to board, and the issues you pose relate only to the three boards specified in your question. I express no opinion here on the budget authority of any other local boards or agencies.

I.

The weed board and the mosquito control board are created by the county commissioners pursuant to Mont. Code Ann. §§ 7-22-2103(1) and -2411, respectively. These boards are subject to the provisions of Mont. Code Ann. § 7-1-201. Administrative boards created by the county commissioners are not independent entities for purposes of filing lawsuits or being sued. Mont. Code Ann. § 7-1-201(4). Under Mont. Code Ann. § 7-1-201(2)(b)(i), an administrative board may "exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law." The resolution creating the administrative board "must contain, if applicable, budgeting and accounting requirements for which the board, district or commission is accountable to the county commissioners." Mont. Code Ann. § 7-1-201(16). With the exception of a public library board of trustees and an airport authority, the proposed budgets of all appointed boards are subject to approval by the local governing body. Mont. Code Ann. § 7-6-2348(1). The board of county

commissioners may revise and change any amounts in the proposed budget, including wages and salaries. Mont. Code Ann. §§ 7-6-604(5)(c), -2314(1)(a), -2315(2). See 38 Op. Att'y Gen. No. 35 (1979).

The statutory powers of a weed board include the power to "employ a supervisor and other employees as necessary and provide for their compensation." Mont. Code Ann. § 7-22-2109(1)(a). The source of funding for the activities of the board is to be provided by the board of county commissioners, according to Mont. Code Ann. § 7-22-2142(1), which states:

The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109

See also Mont. Code Ann. § 7-22-2141. The statute gives various funding alternatives including drawing from the general fund and levying taxes. All expenditures from the noxious weed fund are to be made, after approval by the commissioners, in accordance with recommendations from the board. Mont. Code Ann. §§ 7-22-2143, -2145. A prior Attorney General's Opinion examined in depth the authority of the weed board, and concluded that "the weed board's recommendations in budget matters are subject to final approval by the commissioners" and that there was no means by which the weed board could compel funding by the board of county commissioners. 44 Op. Att'y Gen. No. 35 at 147 (1992).

The mosquito control board's powers and duties include the power to "employ suitable and competent assistants and employees as may be necessary and provide for their compensation." Mont. Code Ann. § 7-22-2415(2). Alternative funding methods to be chosen by the board of county commissioners are authorized by Mont. Code Ann. § 7-22-2432, and the fund is to be earmarked for the purposes for which the mosquito control district was created, Mont. Code Ann. § 7-22-2432(5). According to Mont. Code Ann. § 7-22-2431, the board of county commissioners "shall establish a mosquito control fund" and warrants upon the fund "shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board." While these statutes purport to grant final authority to the mosquito control board, 44 Op. Att'y Gen. No. 35 (1992) requires that they be read in conjunction with the limitations imposed by Mont. Code Ann. §§ 7-1-201 and 7-6-2348(1), and with the general statutes governing county budgeting.

Your letter suggests that Cascade County has created a joint board to administer its weed control and mosquito control districts. By statute both kinds of district boards are authorized to "provide for" the compensation of supervisors and staff. The boards have suggested that this provision allows them to set the amount of compensation to be paid without the control of the board of county commissioners. In my opinion, the term "provide for" does not change the ultimate authority of the commissioners to set salary levels of county employees in the county budget process.

Under general county budget procedures, the commissioners retain the authority to set budgets for the weed board. Mont. Code Ann. § 7-6-2348(1). These general budget procedures include provisions for setting the salaries of county employees, which salaries may differ from those submitted by the county agencies in their budget proposals. 38 Op. Att'y Gen. No. 35 (1979). Once the budget is adopted, transfers of funds within categories cannot result in an increase in a budgeted salary amount. Mont. Code Ann. § 7-6-2325(1). While Mont. Code Ann. § 7-1-201(16) indicates that the specific budget requirements for an administrative board must be set forth in the resolution creating the board, it need not be determined in this opinion whether that provision would allow a county to deviate from the established budget submission procedures for a particular board. In either case, the commissioners would retain the ultimate control over the board's budget.

If the legislature had intended to except board employees from this process it easily could have expressly so provided. Cf. Mont. Code Ann. §§ 22-1-307 to -317 (establishing independent budget authority for county library boards); see 41 Op. Att'y Gen. No. 91 (1986). In my opinion, therefore, the ability of the boards to "provide for" the compensation of employees means only that the boards have the power to contract for the services of the employees and to compensate them as allowed by the budgets adopted by the board of county commissioners. "Provide for" does not necessarily imply the power to exercise independent budget authority over the employees' compensation.

The city-county board of health is established pursuant to Mont. Code Ann. § 50-2-106, by agreement between the city and the county. The local board of health is given the power to appoint a local health officer, to "fix the health officer's salary," and to "employ necessary qualified staff." Mont. Code Ann. § 50-2-116(1)(a), (c). Funding is a joint responsibility of the city and the county. Mont. Code Ann. § 50-2-111. One alternative for funding is to appropriate shares from the county budget and from the city budget during the general budgeting process set forth in title 7, chapter 6, parts 23 and 42. Mont. Code Ann. § 50-2-111(1)(b), (c). Another alternative is for the county and the city to levy taxes, following approval of the respective budgets during the general budgeting process set forth in title 7, chapter 6, parts 23 and 42. Mont. Code Ann. § 50-2-111(2)(b), (c). In either case, when a city-county board of health is created, the county commissioners and the governing body of the city must mutually agree upon the division of expenses, Mont. Code Ann. § 50-2-111(1)(a), (2)(a), and the money goes into the county treasury to be disbursed as county funds. Mont. Code Ann. § 50-2-111(1)(d), (2)(d).

The legislature used the term "provide for" in delineating the powers of the weed and mosquito boards while allowing the city-county board of health to "fix the salary" of its director. Ordinarily a reviewing court would presume that by use of a different term the legislature intended some difference in the scope of the powers of the respective board. However, any inference that the power to "fix the salary" of the city-county health officer overrides the power of the city and county over the board's budget is repelled by the specific budget statutes governing the board. In delineating the budget procedures for a city-county health board, the law provides that both the city and the county are to budget for the board "in the way provided for other [city and] county offices under Title 7, chapter 6, part[s] 23 and 42, respectively." Mont. Code Ann. § 50-2-111(1)(b), (c), (2)(b), (c). As noted above, for the counties, these procedures authorize the commissioners to set salaries for agency staff. While the statutes are not without ambiguity, in my opinion the legislature, by reference to the usual budget procedures that govern county and city agencies, intended to maintain the traditional control over county financial expenditures, including the authority to approve the salary fixed by the city-county board of health for the city-county health officer.

It is certainly possible for a city and county to disagree regarding the appropriate salary. Since both jurisdictions must agree on a division of the budget responsibilities, it appears that neither has the final word without the agreement of the other. In the event an impasse occurs on such an issue, the entities must either resolve the impasse through negotiation or withdraw from the interlocal arrangement which created the joint board initially.

THEREFORE, IT IS MY OPINION:

The weed board, mosquito control board, and city-county health board do not have the authority to fix the level of compensation of their employees without the approval of the board of county commissioners, and, in the case of the city-county health board, also the approval of the governing body of the city.

Sincerely,

JOSEPH P. MAZUREK

Attorney General

jpm/pjj/dm