

47 Op. Att'y Gen. No. 17

COMMUNITY COLLEGES - Funding of community college teacher retirement;
COUNTY COMMISSIONERS - Funding of community college teacher retirement;
EDUCATION - Funding of community college teacher retirement;
RETIREMENT SYSTEMS - Funding of community college teacher retirement;
TEACHERS - Funding of community college teacher retirement;
MONTANA CODE ANNOTATED - Sections 19-20-602, -605, 20-9-142, -501, 20-15-106, -310, -311, -313.

HELD:

The board of county commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property which is located in the county, but not in the community college district. Such a levy may only be imposed on property within the community college district.

August 18, 1998

Mr. Gerald J. Navratil
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P.O. Box 1307
Glendive, MT 59330-1307

Dear Mr. Navratil:

You have asked my opinion on the following question:

May a county in which a community college is located issue a tax levy against property not located within the community college district to fund the local community college district's teachers' retirement obligation?

The process underlying the funding of education in general, community college districts in particular, as well as the teachers' retirement system, is determined by referencing many different sections of Mont. Code Ann. titles 19 and 20. Thus, the resolution of your question necessitates the analysis and interpretation of many and diverse statutes.

Each community college district is "a body corporate and a subdivision of the state of Montana" whose purpose is to provide community college instruction. Mont. Code Ann. § 20-15-101. Community college districts are under the supervision and coordination of the Montana Board of Regents, and are controlled by an elected board of trustees. Mont. Code Ann. §§ 20-15-103, -225. Community college districts may consist of several contiguous elementary school districts and may include more than one county. Mont. Code Ann. § 20-15-201.

General funding for community college districts comes from several sources, including student tuition and fees, the state general fund, and a combination of mandatory and optional mill levies on the community college district. Mont. Code Ann. §§ 20-15-310, -311. Once the trustees have established the mandatory and optional mill levies, the board of county commissioners of each county in the community college district must "fix and levy the community college district tax on *all the real and personal property of the community college district situated in its county.*" Mont. Code Ann. § 20-15-313 (emphasis supplied).

Your question focuses on a specific funding question, the financing of teachers' retirement obligations by a community college district. Teachers employed by a community college district "are subject to and eligible for the benefits of the Montana teachers' retirement system." Mont. Code Ann. § 20-15-106. As such, they are "members" of the teachers' retirement system. Mont. Code Ann. § 19-20-101(9).

The Montana Teachers' Retirement System (hereinafter referred to as TRS) is funded by contributions from its members and the employers of its members. See Mont. Code Ann. §§ 19-20-601 to -621. Employers of TRS members are required to "pick up and pay the contributions that would be payable by the member." Those contributions are part of the members' earned compensation and must be paid out of the same source used to pay the members' compensation. Mont. Code Ann. § 19-20-602(1)(a), (c). Thus, the members' contributions are payable by the community college district from the funding sources listed in Mont. Code Ann. § 20-15-311. Those sources include mandatory and optional levies of taxes imposed *solely* on real and personal property located within the community college district. See Mont. Code Ann. § 20-15-313, discussed above.

Employers of TRS members are also responsible for making employer contributions to TRS's pension accumulation fund. Mont. Code Ann. § 19-20-605. The board of trustees of a community college district must budget and pay for its employer contributions pursuant to Mont. Code Ann. § 20-9-501. See Mont. Code Ann. § 19-20-605(2). This process leads to a mill levy separate and distinct from those contemplated in Mont. Code Ann. § 20-15-311. [Montana Code Annotated § 20-9-501], however, does more than create a retirement fund and establish a reporting system. It directs the county superintendent to determine the "retirement fund levy requirement" necessary to meet the retirement fund budget and then directs the county commissioners to "fix and set" the retirement fund levy in accordance with [Mont. Code Ann. § 20-9-142]. [Section 20-9-142] provides when the county commissioners shall levy on taxable property within the district.

We think this language is sufficient to authorize the county commissioners to levy a special tax to finance community college districts' teachers' retirement fund contributions.

Burlington Northern, Inc. v. Flathead County, 176 Mont. 9, 15, 575 P.2d 912, 915 (1978).

Section 20-9-501 discusses the financing of retirement funds by educational institutions in general. The first two subsections address, among other things, how trustees of school districts are to calculate the employer contribution due TRS. Subsection (3) provides the method to be used by the county superintendent of schools in establishing the retirement fund levy. Subsection (4) requires the county superintendent of schools to "total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county," and to report each of the levy requirements to the board of county commissioners. Mont. Code Ann. § 20-9-501(4)(a), (b).

The board of county commissioners must then "fix and levy on all the taxable value of all the real and personal property *within the district* all district and county taxation required to finance, within the limitations provided by law, the final budget." Mont. Code Ann. § 20-9-142 (emphasis supplied). As used throughout title 20, the term "district" references elementary districts, high school districts, and, "whenever specified," community college districts.

Section 20-9-501's requirement that the county superintendent determine *each district's* net retirement fund separately, together with the language in Mont. Code Ann. § 20-9-142 requiring boards of county commissioners to fix and levy taxes on real and personal property located within a *district*, indicates the legislature's intent that levies designated for community college district retirement costs be limited to property located in the community college district, not county-wide. This interpretation is also consistent with dicta found in Burlington Northern, Inc. v. Flathead County, 176 Mont. at 15, 575 P.2d at 915, that "[Mont. Code Ann. § 20-9-142] provides when the county commissioners shall levy on taxable property *within the district*." (Emphasis supplied.) Thus, a board of county commissioners must limit the levying and taxing of retirement costs specific to a community college district to real and personal property located in that specific district.

THEREFORE, IT IS MY OPINION:

The board of county commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property which is located in the county, but outside of the community college district. Such a levy may only be imposed on property within the community college district.

Very truly yours,

JOSEPH P. MAZUREK
Attorney General

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