

49 Op. Att'y Gen. No. 4

COUNTIES - Ability to levy additional mills to make up shortfall in state reimbursement for light vehicle registration fees;
LOCAL GOVERNMENT - Ability to levy additional mills under Mont. Code Ann. § 15-10-420 to raise amount assessed in property taxes in prior year;
MOTOR VEHICLES - Treatment of light vehicle registration fees under statute providing additional mill authority to raise amount of property taxes assessed in prior year;
TAXATION AND REVENUE - Ability to levy additional mills to make up shortfall in state reimbursement for light vehicle registration fees;
MONTANA CODE ANNOTATED - Sections 7-6-2201, 15-10-420, 61-3-509;
MONTANA LAWS OF 1999 - Chapter 584, section 168;
OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Att'y Gen. No. 24 (2000).

HELD: A local government may levy additional mills pursuant to Mont. Code Ann. § 15-10-420(1) (2001) sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes pursuant to House Bill 124, section 1, and the amount of fees and taxes assessed by the local government for FY 2001.

July 31, 2001

Mr. Leo Gallagher
Lewis and Clark County Attorney
County Courthouse
228 Broadway
Helena, MT 59601

Dear Mr. Gallagher:

You have requested my opinion on the following question:

Pursuant to Mont. Code Ann. § 15-10-420 (2001), may a county include within its mill levy cap provided by Mont. Code Ann. § 15-10-420(1) (2001) a sufficient number of mills to account for the difference between the amount distributed to the counties pursuant to HB 124, § 1, as reimbursement for light vehicle fees collected by the county, and the amount the counties actually assessed in ad valorem light vehicle taxes during FY 2001?

Your question arises from the decision by the 1999 Montana legislature to submit to the voters a referendum on the question of whether the State should change from a system of ad valorem property taxes on light motor vehicles to a flat fee system. 1999 Mont. Laws, ch. 515; see 48 Op. Att'y Gen. No. 24 (2000) (holding that the flat motor vehicle fee is to be considered a tax for federal Indian law purposes). In the November 2000 election, the voters approved the referendum, which provided that the change from property tax to flat fee would take effect January 1, 2001. Since the local government fiscal year runs from July 1 through June 30, Mont. Code Ann. § 7-6-2201, this meant that counties would receive property tax revenue from light motor vehicles for one half of FY 2001 and flat fees for the other half.

In 2001, the legislature enacted a comprehensive restructuring of the laws relating to county budgets and particularly the disposition of revenues collected by the counties. 2001 Mont. Laws, ch. 574, commonly known as HB 124, adopted a general approach of requiring certain funds collected by the counties to be remitted to the state general fund, with the counties to be reimbursed by allocations from the general fund for the lost revenue. In accordance with this general approach, section 173 of HB 124 amended Mont. Code Ann. § 61-3-509 to reallocate the light vehicle registration fee from the county motor vehicle suspense fund to the state general fund.

In addressing the reimbursement due the counties for the vehicle taxes allocated to the state general fund, HB 124 directed the Department of Revenue to calculate the base reimbursement amount due the counties as though the light vehicle registration fee, rather than the ad valorem property tax, had been in

effect for the entirety of FY 2001. HB 124, § 1(8). As a result, on average the counties will receive as reimbursements for lost light vehicle fee collections about 88% of the revenue they actually received in combined fees and property taxes in FY 2001.

It seems clear from the history, terms, and structure of HB 124 that the legislature intended to simplify the collection and disbursements of county revenue while at the same time attempting to maintain rough revenue neutrality for the counties. HB 124 was an outgrowth of an interim study mandated by the 1999 legislature. 1999 Mont. Laws, ch. 584, § 168. Chapter 584 enacted numerous changes in property tax laws, including reductions in the tax rates applied to several classes of property, and provided a mechanism for reimbursement of counties for a portion of the revenue lost. Ch. 584, § 167. Section 1 of HB 124 contains a detailed formula for the calculation of the amount of state general fund revenue that will be remitted to the counties under the bill. In addition, the bill amended Mont. Code Ann. § 15-10-420 to provide an inflation adjustment to the mill levy cap provided in § 15-10-420(1). Finally, the legislature provided for an increase in the mill levy capacity for "a decrease in reimbursements." Mont. Code Ann. § 15-10-420(7) (2001).

In my opinion, the legislature's intention in enacting HB 124 was to enable local governments to maintain for FY 2002 the amount of revenue collected in FY 2001. That includes, if necessary, the levying of additional mills to cover personal property taxes and fees on light vehicles for which the counties were not reimbursed pursuant to section 1 of HB 124. By including the light vehicle fees in the calculation of the reimbursements due under section (1) of the bill, the legislature provided the local governments with, on average, 88% of the revenue they had previously collected in ad valorem taxes. Mont. Code Ann. § 15-10-420(1), allowing the local governments to levy sufficient mills "to generate the amount of property taxes actually assessed in the prior year," operates to authorize the local government to levy additional mills to ensure that the county is able to match the property taxes assessed in the prior year.

THEREFORE, IT IS MY OPINION:

A local government may levy additional mills pursuant to Mont. Code Ann. § 15-10-420(1) (2001) sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes pursuant to House Bill 124, section 1, and the amount of fees and taxes assessed by the local government for FY 2001.

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/dm