

49 Op. Att'y Gen. No. 5

AIRPORTS - Authority of city to levy property tax for airport purposes;

CITIES AND TOWNS - Authority of city to levy property tax for airport purposes;

MUNICIPAL GOVERNMENT - Authority of city to levy property tax for airport purposes;

TAXATION AND REVENUE - Application of mill levy caps to statutory authority to levy taxes for airport purposes;

TAXATION AND REVENUE - Application of new "carry forward" mill levy authority to property tax levies set in 2001;

TAXATION AND REVENUE - Authority of city to levy property tax for airport purposes;

MONTANA CODE ANNOTATED - Sections 1-2-109, 7-6-4407, -4451, 7-34-102, 7-35-2122, 15-10-420 (1999), 15-10-420 (2001), 67-10-402 (1999), 67-10-402 (2001);

MONTANA LAWS OF 2001 - Chapter 574.

HELD:

1. The mill levy cap provided in Mont. Code Ann. § 15-10-420(1)(a) (2001), as amended by HB 124, is calculated with reference to the total property tax assessed in the previous year, and not by reference to the amount levied for any particular purpose in any prior year.
2. Local governments may not derive "carry forward" authority under Mont. Code Ann. § 15-10-420(1)(b) (2001) based on the difference between the mill levy set in 2000 and the amount the local government would have been authorized to levy under Mont. Code Ann. § 15-10-420(1) (1999).
3. The "carry forward" authority provided in Mont. Code Ann. § 15-10-420(1)(b) (2001), as amended by HB 124, will be available whenever the local government levies fewer mills than would be authorized to reach the mill levy cap provided in subsection (1)(a), and is measured by the difference between the number of mills actually levied and the number of mills the local government would have been allowed to levy to reach the cap.
4. The "carry forward" mills may be levied in a future year and expended by the local government for any lawful purpose it chooses.

August 7, 2001

Mr. David Gliko
Great Falls City Attorney
P.O. Box 5021
Great Falls, MT 59403-5021

Dear Mr. Gliko:

You have requested my opinion on the following questions:

1. Under then-existing law, did the City of Great Falls have authority to levy an additional two mills for airport purposes under Mont. Code Ann. § 67-10-402 (1999), in light of the fact that the city had not levied any mills under § 67-10-402 in 1998?
2. Do the 2001 amendments to Mont. Code Ann. § 15-10-420(1)(b) authorize the city to "carry forward" authority to levy an additional two mills for airport purposes, in light of the fact that no revenue from such mills was included in the city's property tax revenues for the past three years?

Your questions arise from the provisions of HB 124 (2001 Mont. Laws, ch. 574), which was enacted by the 2001 legislature and signed into law by the Governor on May 5, 2001. HB 124 substantially revised the laws relating to the levy and budgeting of property taxes for the support of local government services. Since the answer to your second question renders question 1 moot, I will proceed to it first.

HB 124 made a number of fundamental changes in the financial operation of local governments and in the financial relationship between the local governments and the state government. Most pertinent to your inquiry is the new approach taken under HB 124 with respect to funding certain specific local government programs, such as airport facilities. Prior to the enactment of HB 124, as you note, a municipality was authorized to levy a tax of up to two mills on the taxable value of property within its jurisdiction for the support of airports and landing fields. Mont. Code Ann. § 67-10-402(1) (1999). Numerous similar provisions existed in the code for specific mill levies for specific local government purposes. See, e.g., Mont. Code Ann. § 7-34-102 (1999) (allowing counties, cities, and towns to levy one mill for ambulance services); § 7-35-2122 (1999) (allowing counties to levy up to four mills for cemetery purposes). HB 124 adopted a general approach of deleting numeric limits on the number of mills a local government would be allowed to levy for any specific purpose. Thus, under the bill, Mont. Code Ann. § 67-10-402 was amended to provide:

(1) Subject to 15-10-420 . . . the city or town council may levy, in addition to the annual levy for administrative purposes or the all purpose mill levy authorized by 7-6-4451, a tax on the taxable value of all taxable property in the . . . city or town for airports and landing fields and for ports.

Mont. Code Ann. § 67-10-402(1) (2001), as amended by HB 124, § 183.

Mont. Code Ann. § 15-10-420 contains the remnants of the property tax limitation enacted by the voters through Initiative 105. As amended by HB 124, it places a cap on the number of mills a local government may levy through property taxation:

(1)(a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years.

. . . .
(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

The combined effect of the elimination of the specific mill levy limits and the mill levy cap is to free a local government to dedicate as much of its annual mill levy as it chooses to any lawful government purposes, as long as the total millage covered by the cap does not exceed the cap measured by the prior year's property tax assessments.

For this reason, your first question is moot. In calculating the City's mill levy for this year, it does not matter whether the City levied two mills, or for that matter any mills, for airport purposes under Mont. Code Ann. § 67-10-402(1) in any prior year. Under HB 124, the City is authorized to levy a property tax for the airport, and as long as the City's total property tax collections covered by the mill levy cap in Mont. Code Ann. § 15-10-420(1)(a) do not exceed those assessed in the prior year, the airport levy is permissible. It is simply not relevant under this statutory scheme whether the City levied a tax under Mont. Code Ann. § 67-10-402(1) in any prior year.

The "carry forward" provision found in Mont. Code Ann. § 15-10-420(1)(b) likewise does not depend on how many mills, if any, the City chooses to devote to airport purposes in any year. This subsection allows the City, if it finds itself able to fund its operations without levying the full number of mills allowed by subsection (1)(a), to hold in reserve for future years the authority to levy the difference between the number of mills allowed and the number actually levied. The "carry forward" authority is not calculated on the basis of the amount budgeted or the number of mills needed to finance any specific government function. Rather, it is calculated with reference to the whole amount of funds raised by property taxes, subject to the exceptions provided in the statute, without reference to how the money might actually have been spent in the prior year.

Implicit in your second question is the issue of whether any "carry forward" authority for the upcoming budget year may be derived from the fact that a local government may not have levied the entire amount allowed by the mill levy cap provided by Mont. Code Ann. § 15-10-420(1) (1999). Section 94 of HB 124,

which amended Mont. Code Ann. § 15-10-420, became effective July 1, 2001. The legislature is presumed to have enacted the bill with an understanding of the local government budget cycle, which requires municipalities to set their property tax mill levies in August of each year. Mont. Code Ann. § 7-6-4407; see Ross v. City of Great Falls, 1998 MT 276, 17, 291 Mont. 377, 383, 967 P.2d 1103, 1106 (1998). Laws operate prospectively unless the contrary intention is clearly stated. Mont. Code Ann. § 1-2-109.

Here, the language of the 2001 amendments to Mont. Code Ann. § 15-10-420(1) suggests that it was not the intention of the legislature to provide "carry forward" authority for a local government based on the fact that it may have levied less than the permissible number of mills in 2000. The "carry forward" authority did not exist when the local mill levies were set in August 2000. Moreover, Mont. Code Ann. § 15-10-420(1)(b) provides the "carry forward" benefit to "a local government that does not impose the maximum number of mills under subsection (1)(a)." The reference to the maximum millage calculated "under subsection (1)(a)" strongly implies that the legislature intended that the "carry forward" authority not be available to local governments based on their 2000 mill levies. "Subsection (1)(a)" did not exist when the 2000 mill levies were set. HB 124 enacted significant changes in the calculation of the mill levy cap by providing a limited form of indexing for inflation which did not previously exist. Thus, in my opinion, it would not be possible to calculate a "carry forward" benefit for local governments in the 2001 budget year, since the basis for the calculation--the mill levy calculated under Mont. Code Ann. § 15-10-420 *as amended by HB 124*--does not exist.

Thus, the answer to your second question is as follows. The City need not have levied any mills for airport purposes, in 2000 or in any other prior year, to be allowed to levy a property tax for airport purposes in 2001. The only requirement is that any airport levy, considered together with all other property tax levies to which Mont. Code Ann. § 15-10-420(1)(a) applies, must be within the mill levy cap provided by that subsection. Any mill levy "carry forward" authority that the City receives from the provisions of Mont. Code Ann. § 15-10-420(1)(b) cannot be derived from the mill levy set in August 2000, but may be applied in the future, initially by reference to the mill levy set in August 2001. In the future, the "carry forward" will be calculated by reference to the total property tax assessments covered by the mill levy cap in subsection (1)(a). The "carry forward" authority may be used by the City in subsequent years for any lawful purpose it chooses, including funding of airport operations, regardless of whether the City has levied taxes for airport purposes in any prior year.

THEREFORE, IT IS MY OPINION:

1. The mill levy cap provided in Mont. Code Ann. § 15-10-420(1)(a) (2001), as amended by HB 124, is calculated with reference to the total property tax assessed in the previous year, and not by reference to the amount levied for any particular purpose in any prior year.
2. Local governments may not derive "carry forward" authority under Mont. Code Ann. § 15-10-420(1)(b) (2001) based on the difference between the mill levy set in 2000 and the amount the local government would have been authorized to levy under Mont. Code Ann. § 15-10-420(1) (1999).
3. The "carry forward" authority provided in Mont. Code Ann. § 15-10-420(1)(b) (2001), as amended by HB 124, will be available whenever the local government levies fewer mills than would be authorized to reach the mill levy cap provided in subsection (1)(a), and is measured by the difference between the number of mills actually levied and the number of mills the local government would have been allowed to levy to reach the cap.
4. The "carry forward" mills may be levied in a future year and expended by the local government for any lawful purpose it chooses.

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/dm