

CITIES AND TOWNS - Whether urban renewal districts may include property outside the boundaries of a municipality;

COUNTIES - Whether urban renewal districts may include property outside the boundaries of a municipality; industrial districts and tax increment financing;

COUNTY GOVERNMENT - Whether urban renewal districts may include property outside the boundaries of a municipality; industrial districts and tax increment financing;

MUNICIPAL GOVERNMENT - Whether urban renewal districts may include property outside the boundaries of a municipality;

STATUTORY CONSTRUCTION - Mont. Code Ann. § 7-15-4201 to -4299;

TAXATION AND REVENUE - Industrial districts and tax increment financing;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-11-101 to -108, -104, 7-15-4201 to -4299, -4206(8), -4210, -4211 -4216, -4234, -4236, -4251(2), -4255, -4267, -4281, -4282, -4283(8), -4297 to -4299, -4298(4), -4299(1)(e);

MONTANA LAWS OF 1989 - Chapter 712.

- HELD:
1. An urban renewal project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law. Tax increment financing may not be used to support such a project.
 2. Since MetraPark does not engage in a “secondary, value-added industry,” financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

September 6, 2006

Mr. Daniel L. Schwarz
Chief Deputy Yellowstone County Attorney
217 North 27th Street
P.O. Box 35025
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Dear Mr. Schwarz:

The Yellowstone County Board of County Commissioners has requested my opinion on the following questions:

1. May a county enter into an interlocal agreement with a city to effectuate an urban renewal multi-jurisdictional tax increment financing district (TIF) which includes the properties of both the city and the county?
2. If such a district is allowed by law, which governing body will have ultimate budget and spending authority regarding the TIF?
3. May the county set up an industrial TIF consisting only of properties located within the county and subject only to county authority?
4. If such an industrial district TIF is legally established, may funds generated from the TIF be utilized for improvements at MetraPark in Billings?

I.

Your questions require the interpretation of Montana's Urban Renewal Law, Mont. Code Ann. § 7-15-4201 to -4299.

Your first question focuses on whether property within a county but outside a municipality may be subject to an urban renewal plan. I have concluded that it may not.

The Urban Renewal Law makes repeated references to conferring defined powers upon a "municipality." For purposes of the law, a "municipality" is defined as "any incorporated city or town in the state." Mont. Code Ann. § 7-15-4206(8). Before a municipality may exercise any of the powers conferred by the law, it must adopt a resolution "finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality." Mont. Code Ann. § 7-15-4210. (Emphasis added.) The law grants authority "in every municipality" to develop a comprehensive plan for the "development of the municipality as a whole" Mont. Code Ann. § 7-15-4211. The urban renewal plan must include

“the urban renewal area for the municipality” Mont. Code Ann. § 7-15-4216. The mayor will appoint a board of commissioners to manage and conduct the business of an urban renewal project. Mont Code. Ann. § 7-15-4234, -4236. And a municipality is granted general powers “to undertake and carry out urban renewal projects within the municipality” Mont. Code Ann. § 7-15-4251(2). (Emphasis added.) There is no suggestion anywhere in the statute that an urban renewal project may be undertaken outside of the boundaries of a municipality by either a city or a county. Tax increment financing may not be used to support to support such a project since a project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law.

The statutes do provide opportunities for a county to cooperate in a municipal urban renewal plan. Mont. Code Ann. § 7-15-4255, for example, allows a municipality to contract with another public agency to upgrade services or facilities in an urban renewal project. Similarly, Mont. Code Ann. § 7-15-4267 provides for the cooperation of other public bodies in accomplishing urban renewal projects. Mont. Code Ann. § 7-15-4281 specifically allows a county to provide financial assistance for a project. No provision of the code, however, expands the scope of permissible urban renewal project to include lands outside the municipal boundary.

Montana Code Annotated §§ 7-11-101 to -108 defines the authority of cities and counties to enter interlocal agreements. Mont. Code Ann. § 7-11-104 makes clear that a city and county may enter an agreement for any project “that any of the public agencies entering into the contract is authorized by law to perform.” Thus it is clear that an interlocal agreement between a city and county may facilitate a project that either may already perform, but does not expand the authority of the parties to allow them to engage in a project that neither is otherwise allowed to do. Since the law does not contemplate a city urban renewal project incorporating lands outside the city limits, an interlocal agreement between a city and county may not serve to create such a project.

The answer to your first question makes an answer to your second question unnecessary.

II.

Tax increment financing is authorized not only for urban renewal districts but also for industrial districts and technology districts. Mont. Code Ann. § 7-15-4282. Your last two questions inquire about the use of an industrial district TIF for improvements at MetraPark. I assume that MetraPark is located outside of the city limits of Billings.

I concur with your conclusion that a county may establish an industrial district on county property located outside of a city or town. The code broadens the definition of “municipality” for purposes of an industrial district. Mont. Code Ann. § 7-15-4283(8) (for purposes of an industrial district, “municipality . . . means any incorporated city or town county, or city-county consolidated local government.”). But I cannot concur that an industrial district TIF can be created to make improvements to MetraPark.

Montana passed the Tax Increment Financing Industrial Development Act in 1989. The Act consists of three sections, Mont. Code Ann. §§ 7-15-4297 to -4299. The preamble to the Act, which is not codified, places the language of the statute into context for purposes of interpretation:

WHEREAS, the State of Montana wishes to encourage the attraction and retention of secondary, value-adding industrial manufacturing that uses Montana timber, mineral, oil and gas, coal, and agricultural resources in the production of products in the state; and

WHEREAS, secondary, value-adding industries are those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured; and

WHEREAS, secondary, value-adding industries, in order to be competitive in today's world economy, require expensive infrastructure that is beyond the means of most Montana communities; and

WHEREAS, Montana law currently provides certain property tax benefits to new and expanding industries, including secondary, value-adding industries, but has little to directly encourage the development of needed industrial infrastructure to attract secondary, value-adding industries; and

WHEREAS, additional creative use of Montana's current tax laws could encourage increased investment in secondary, value-adding industries in the state through the use of tax increment financing for infrastructure improvements in areas in which the infrastructure would be available for secondary, value-adding industrialization.

1989 Mont. Laws, ch. 712.

The Act goes on to list certain legislative findings. Among them are that “the state's tax increment financing laws should be used to encourage the creation of areas in which needed industrial infrastructure for secondary, value-adding industries could be developed.” Mont. Code Ann. § 7-15-4298(4). An industrial district may be created if the proposed district “has as its purpose the development of infrastructure to encourage

the growth and retention of secondary, value-adding industries.” Mont. Code Ann. § 7-15-4299(1)(e).

The language of the statute is plain and unambiguous on its face. In the interpretation of a statute, one may not “insert that which has been omitted or omit that which has been inserted.” Mont. Code Ann. § 1-2-101.

In this regard, the intent of the legislature governs the interpretation of the statute. Matter of Estate of Baier (1977), 173 Mont. 396, 567 P.2d 943. Its intent must, if possible, be determined from the plain meaning of the words used. If the interpretation of the statute can be so determined, the courts may not go further and apply other means of interpretation. Softich v. Baker (1976), 171 Mont. 135, 556 P.2d 902.

Haker v. Southwestern R.R., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978).

Any doubt as to the legislative intent is fully resolved by the Preamble. Taken together with the language of the statute, it is clear that the legislature intended to allow the creation of industrial districts and the use of tax increment financing within those districts for the purpose of developing infrastructure “available for secondary, value adding” industries. If the term “secondary, value adding industries” needed any clarification, that clarification is provided by the Preamble. “Secondary, value-adding industries are those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured.”

As meritorious as the activities conducted at MetraPark may be in the promotion of Montana’s primary and secondary industries, these activities do not constitute the manufacturing transformation of primary, raw resources into “processed” substances. Financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

THEREFORE, IT IS MY OPINION:

1. An urban renewal project consisting in part of property outside a municipality is not permitted under the Urban Renewal Law. Tax increment financing may not be used to support such a project.
2. Since MetraPark does not engage in a “secondary, value-added industry,” financing for infrastructure improvements at MetraPark is not permitted under the Tax Increment Financing Industrial Development Act.

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Very truly yours,

MIKE McGRATH
Attorney General

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