

COUNTIES - Budget authority with respect to hospital districts;

COUNTIES - Budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;

HEALTH CARE FACILITIES - Authority of county commission with respect to hospital district budget;

HOSPITAL DISTRICTS - Authority of county commission with respect to hospital district budget;

LOCAL GOVERNMENT - County budget powers in light of Mont. Code Ann. §§ 15-10-420, 7-6-4035 and -4036;

STATUTORY CONSTRUCTION - Construction of related statutes to give effect to all;

STATUTORY CONSTRUCTION - Effect of later adopted statute on earlier statutes dealing with same subject;

STATUTORY CONSTRUCTION - Presumption that legislation is intended to change existing law;

MONTANA CODE ANNOTATED - Sections 2-9-316, 7-6-2527, -4001, -4015, -4035, -4036, 7-34-2131, -2132, -2133, 15-10-402, -420, (1)(a), (b), -425, 22-1-304, 67-10-402(1);

MONTANA LAWS OF 2001 - Chapters 278, 574, section 84;

OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 16 (2001), 49 Op. Att'y Gen. No. 5 (2001), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
 2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the “governmental entity” levying the tax is the county, not the district.
 3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year,

increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.

4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.”
5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

July 30, 2009

Granite County Board of Commissioners
P.O. Box 925
Philipsburg, MT 59858-0925

Dear Commissioners:

[P1] You have requested my opinion regarding the funding of the newly created Granite County Hospital District. I have identified the issues presented as follows:

1. May a newly created hospital district levy mills to support its budget under the provisions of Mont. Code Ann. § 7-34-2133 where it has not previously levied mills?

2. How do Mont. Code Ann. § 15-10-420, as amended in 2001, and other statutory amendments enacted in 2001, affect the county mill levy for hospital purposes?

Your letter informs me that the voters of Granite County have approved the creation of a new hospital district and have elected the Trustees of the district. Since the district is new entity, the County has not previously levied mills or budgeted funds needed to operate the district.

[P2] In 2001, the Montana legislature made several changes in the funding of local government services. The most sweeping of these changes is found in 2001 Mont. Laws, ch. 574. Prior to 2001, Mont. Code Ann. § 15-10-420 (“§ 420”) provided a complex process to limit local government tax revenues, taking into account the existence of numerous statutes that provide for special mill levies in specified amounts tied to specific purposes, as Mont. Code Ann. § 7-34-2133 does for hospital districts. The 2001 amendments to § 420 scrapped the existing process and replaced it with a mill levy cap. The cap encompasses almost all local government mill levies, including special levies, and limits the local government’s mill levies for almost all purposes to the number of mills needed to provide the same revenue as was raised in the prior year, indexed for inflation. The amended § 420 also allows a local government to carry mills forward to a subsequent year when the entire amount of revenue that might be raised under the cap has not been raised.

[P3] The same bill amended a large number of special mill levy statutes in two basic ways. These amendments eliminated numerical mill levy caps found in the special levy statutes. Section 84 of the bill amended Mont. Code Ann. § 7-34-2133 to eliminate the three mill limit for hospital districts. It also modified all of the special levy statutes, including Mont. Code Ann. § 7-34-2133, to make clear that all of the special levies were “subject to 15-10-420.”

I.

[P4] In 49 Op. Att’y Gen. No. 5 (2001), Attorney General McGrath answered several questions posed by the City of Great Falls under § 420 relating to the city airport. One of the issues presented was whether the limit on mills was calculated by reference to specific programs for which the legislature had provided levy authority, or by reference to the total number of mills levied by the city for all purposes.

[P5] In response to that question, Attorney General McGrath held that § 420 limited the total number of mills levied by a local government, regardless of the purpose for which it levies the mills. He stated:

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 [§ 420], 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 [the airport special tax levy statute] in any prior year.**

(Emphasis added.) The ability of the county to levy mills for the hospital district therefore is not affected by the fact that the district is new or by the fact that no mills have been levied for the district in past years. Since the taxing authority in § 7-34-2133 is “subject to 15-10-420,” it cannot be argued that the hospital levy is exempt from the mill levy limits.

II.

[P6] Under § 420, the “governmental entity” for purposes of calculating the mill limit is the commission, not the hospital district. Montana Code Annotated § 7-34-2133 requires “the board of county commissioners” to levy the tax, not the hospital district board, just as the tax levy for the Great Falls airport was levied by the city commission, not by the airport board.

III.

[P7] Moreover, under the 2001 amendment to section 420, the amount of taxes levied in 1996 is no longer a limiting factor. The 2001 amendment to section 420 specifically modified the reference to 1996 in Mont. Code Ann. § 15-10-402. As amended, § 420 provides that the limiting factor is now the tax revenue generated in the prior year, not in 1996. The Board of Commissioners may levy the maximum mills allowed by § 420.

[P8] Accordingly, there are several options by which a Board of Commissioners may fund a hospital district. If a hospital district exists or is created, the Commissioners may provide funding from the general mill levy. They may also levy mills under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County for the

hospital and for all other purposes covered by § 420 stays within the cap provided by § 420. The county may also provide funding for the hospital from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425. Finally, Mont. Code Ann. § 7-34-2131 allows a hospital district to issue bonds to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

IV.

[P9] One other point deserves mention. Montana Code Annotated § 7-34-2132 requires the hospital trustees to present the county commission a budget and to “certify the amount necessary and proper for the ensuing year.” Montana Code Annotated § 7-34-2133 then provides that the commissioners “shall, annually at the time of levying county taxes, fix and levy a tax on the taxable value of all taxable property within the hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.” In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

[P10] First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded. Compare Skinner Enters. v. Lewis & Clark County Bd. of Health, 286 Mont. 256, 271, 950 P.2d 733, 742) (1997) (construing statutes together avoids absurd results).

[P11] Second, other actions of the 2001 legislature suggest that the overall intention of the legislature was to vest the local government with the authority to approve the budgets of local boards and commissions. 2001 Mont. Laws, ch. 278, enacted provisions that have been codified at Mont. Code Ann. §§ 7-6-4035 and -4036. Section 7-6-4035 provides, in pertinent part: “The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.” Section 7-6-4036 provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-

4034. . . . Each levy . . . except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420.

The legislature made these provisions part of the “Local Government Budget Act.” Mont. Code Ann. § 7-6-4001.

[P12] Making the “proposed budget” of the hospital district subject to “approval” by the Commissioners, as Mont. Code Ann. § 7-6-4035 requires, would be meaningless if the Hospital Board could nevertheless compel the Commissioners to approve its budget proposal intact. It is presumed that the legislature does not intend to require meaningless acts, Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996) (“This Court presumes that the legislature does not pass meaningless legislation.”), and that a legislative enactment is intended to change existing law, Cantwell v. Geiger, 228 Mont. 330, 333, 742 P.2d 468, 471 (1987) (“In construing a statute, this Court presumes that the legislature intended to make some change in existing law by passing it.”).

[P13] The net effect of the 2001 local government budget enactments is to ensure that local governing bodies have sufficient flexibility to provide necessary services within a balanced and limited budget. The conclusion that the county commissioners would be required to accept and budget for the proposed budgets of a hospital district is inconsistent with the flexibility provided by § 420 and the broad budget authority provided in the Local Government Budget Act.

[P14] The guidelines for the construction of statutes recognize that all statutes relating to a particular subject are to be read together in a way that gives effect to all, City of Billings v. Panasuk, 253 Mont. 403, 406, 833 P.2d 1050, 1052 (1992), and that the meaning of earlier statutes may be affected by later-adopted statutes dealing with the same subject matter, see State v. Marchindo, 65 Mont. 431, 443, 211 P. 1093, 1097 (1922) (“It is the rule of construction that, where a new remedy or mode of procedure is authorized by a new statute, and the new procedure is inconsistent with the former one, the latest expression of legislative will must govern; however, to the extent only as provided in the new Act.”) These principles apply to the construction of Mont. Code Ann. § 7-34-2133 in light of the later adopted provisions of Mont. Code Ann. §§ 7-6-4035 and -4036.

[P15] In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts. Under the

2001 statutes, the Commissioners have the authority to review and adjust the budgets proposed by hospital district trustees.

[P16] I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att’y Gen. No. 16 (2001); 48 Op. Att’y Gen. No. 3 (1999); 41 Op. Att’y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.

THEREFORE IT IS MY OPINION:

1. Subject to Mont. Code Ann. § 15-10-420, a board of county commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes.
2. For purposes of applying Mont. Code Ann. § 15-10-420 to a mill levy for a county hospital district under Mont. Code Ann. § 7-34-2133, the “governmental entity” levying the tax is the county, not the district.
3. Under Mont. Code Ann. § 15-10-420, county property taxes are limited by the number of mills required to raise the same amount of tax revenue as was raised in the immediately previous year, increased by (a) one-half of the average rate of inflation for the previous year, and (b) by any mills carried over from the previous year under Mont. Code Ann. § 15-10-420(1)(b). The amount of tax revenue raised in 1996, as provided in Mont. Code Ann. § 15-10-420, is no longer the limiting factor.
4. The Commissioners may provide funding for a hospital district from the general mill levy or from (a) mills levied under Mont. Code Ann. § 7-34-2133, so long as the total number of mills levied by the County under Mont. Code Ann. § 7-1-2133 and for all other purposes covered by § 420 stays within the cap provided by § 420; (b) from an additional mill levy amount approved by the voters under Mont. Code Ann. § 15-10-425; or (c) from bonds sold pursuant to Mont. Code Ann. § 7-34-2131 to defray the cost of “acquisition, furnishing, equipment, improvement, extension, and

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betterment of hospital facilities and to provide an adequate working capital for a new hospital.”

5. Montana Code Annotated § 7-34-2133 does not obligate the county to fund the budget proposed by the county hospital district trustees without change.

Sincerely,

STEVE BULLOCK

Attorney General

sb/cdt/jym