

COUNTIES - Authority to allocate funds in the Hard-Rock Mine Reserve Trust Account;  
MINES AND MINING - Allocation of funds in the Hard-Rock Mine Reserve Trust Account;

SCHOOL DISTRICTS - Distribution of proceeds from Hard-Rock Mine Reserve Trust Account;

STATUTORY CONSTRUCTION - Statutes must be read in relationship to one another to effectuate the intent of the statutes as a whole;

TAXATION AND REVENUE - Authority to tax mine proceeds to fund Hard-Rock Mine Reserve Trust Account;

MONTANA CODE ANNOTATED - Sections 1-2-102, 7-6-2225, (2), (3), (a), (b), (c), (d), (e), (f), 15-37-101(1), -117, (1)(e), (ii), (B), (C), 90-6-307;

MONTANA LAWS OF 1989 - Chapter 672, sections 8, 9.

HELD: When funds are expended from the Hard-Rock Mining Reserve Trust Account due to closure of a hard-rock mine or a layoff of more than 50 percent of a hard-rock mine's average work force under the Mont. Code Ann. § 7-6-2225, the county governing body must allocate at least one-third of the funds to elementary and high school districts in the county that it determines have been affected by the mine closure or reduction in force, in the proportion that it determines in its discretion to be proper in response to the impacts of the closure or reduction in force. The county governing body then has the discretion to either give the affected districts additional money or to disburse the remaining funds not allocated to the school districts for the purposes provided in Mont. Code Ann. § 7-6-2225(3)(a) to (f).

October 2, 2009

Ms. Eileen Joyce  
Butte-Silver Bow County Attorney  
155 West Granite Street  
Butte, MT 59701

Dear Ms. Joyce:

You have requested my opinion on the following question:

How does a county allocate funds in the Hard-Rock Mine Reserve Trust Account (hereafter “the Account”) between the county and the elementary and high school districts in the county, once a triggering event as set forth in Mont. Code Ann. § 7-6-2225(2) occurs?

The Metalliferous Mines License Tax (hereafter “the Tax”) is the source of funds in the Account. The Tax is collected on the proceeds of metal and gem mining activity. Mont. Code Ann. § 15-37-101(1).

Montana Code Annotated § 15-37-117 governs allocation of the Tax proceeds. Under the statute, 75 percent of each year’s tax collections are deposited to various state accounts. The legislature has allocated the remaining 25 percent to the county, which must place at least 37.5 percent of its share of each year’s tax revenue into the Account. Subject to an exception not pertinent to your questions, the statute then allocates any remaining portion of its yearly share as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

Mont. Code Ann. § 15-37-117(1)(e).

The county must hold the funds in the Account--the aggregate of the county’s yearly deposits to the Account--until a mining operation has permanently ceased all mining-related activity, or the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of full-time employees engaged in full-time mining activities during the preceding five-year period. Mont. Code Ann. § 7-6-2225(2). For purpose of this opinion, I refer to these as “triggering events.”

Under Mont. Code Ann. § 7-6-2225(3), once a triggering event occurs “the governing body of the county must allocate at least one-third of the funds [in the Account] proportionally to affected high school districts and elementary school districts in the

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county.” The governing body may then “use the remaining funds” from the account for county grants or loans to other local government units within the county, to stabilize mill levies, to retire local government debt, or to aid in private economic development in order to retain jobs or attract new industry, so that the detrimental impacts caused by the changes in mining activity are lessened. Mont. Code Ann. § 7-6-2225(3) (emphasis added).

Your questions are prompted by a disagreement between Butte-Silver Bow County and Butte School District No. 1 over the meaning of Mont. Code Ann. § 7-6-2225(3). Butte-Silver Bow interprets the statute to mean that when funds in the Account may be expended, a county receives up to two-thirds of the funds dedicated to the purposes set forth in Mont. Code Ann. § 7-6-2225(3)(a) to (f), and the high school and elementary school districts divide the remaining one-third of the funds proportionally among the affected school districts. The school district interprets the statute to mean the funds should be distributed “proportionally” one-third to the county, one-third to Butte School District No. 1, and one-third to the affected elementary school district(s).

I have been informed that in some counties where mine closures triggered distribution of funds from the Accounts, the proceeds were distributed by the county commissioners two-thirds to the county and one-third to the affected high school and elementary school districts. In other counties, including Silver Bow County, past distributions due to mine closures were distributed one-third to the county, one-third to the affected high school districts, and one-third to the affected elementary school districts.

There have been no rulings from the Montana Supreme Court interpreting the statutes involved, nor is there any recorded legislative history that sheds light on legislative intent as to how a county should distribute its Account funds. When interpretation of a statute is a matter of first impression, courts rely upon the rules of statutory construction to interpret the statute in a manner that best implements the legislature’s intent. Mont. Code Ann. § 1-2-102.

Legislative intent is best determined by resort to the plain meaning of the words used in the statutes themselves. State v. Heath, 2004 MT 126, ¶¶ 24-25, 321 Mont. 280, 90 P.3d 426. Montana Code Annotated § 7-6-2225(3) states when a triggering event occurs, “the governing body of the county shall **allocate at least** one-third of the funds **proportionally** to **affected** high school districts and elementary school districts in the county and may use the **remaining** funds in the hard-rock mine account . . .” for purposes specified by the statute that relate to mitigation of effects of the triggering event. (Empasis added.) The meaning of the words “allocate,” “at least,” “remaining,” “proportionally,” and “affected” reveal the legislature’s intent as to how the funds should be distributed.

“Allocate” means “to apportion for a specific purpose or to particular persons or things.” Webster’s Ninth New Collegiate Dictionary at 72 (1991). “At least” indicates that the one-third distribution to the school districts is a floor, and not a ceiling, as to how much of the funds the affected school districts should receive. The term “remaining funds” is significant in context. The statute does not limit the amount of money that the county may allocate to the “*remaining two-thirds* of the funds,” leaving open the possibility that something other than a straight division of the funds into thirds was intended.

The statute also does not define “proportionally” or “affected.” However, the statutes relating to the Tax use these terms in other places, and the usage provides guidance as to the meaning of the terms here. See Skinner Enters. v. Lewis and Clark County Bd. of Health, 286 Mont. 256, 272, 967 P.2d 733, 742 (1997) (“[S]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole”) (citation omitted).

Montana Code Annotated § 15-37-117(1)(e) provides that as an alternative to allocating the entire 25 percent of the Account to the county, if a hard-rock mining impact plan has been adopted under Mont. Code Ann. § 90-6-307, the allocation should be to the county or counties experiencing impacts “in direct *proportion*” to the impacts determined in the plan. This usage suggests that in this context the term “proportionally” (the adverb form of “proportion”) relates to an allocation of the funds among the high school and elementary school districts in relation to the impacts of the closure or layoff.

Further, as explained above, Mont. Code Ann. § 15-37-117(1)(e)(ii)(B) and (C) allocates funds the county does not place in the Account in thirds among the county and the high school and elementary school districts “affected by the development or operation of the metal mine.” The use of the term “affected” in this context suggests that in Mont. Code Ann. § 7-6-2225(3) the term relates to impacts suffered by the school districts from the mining operation.

The only action Mont. Code Ann. § 7-6-2225(3) *requires* of the county is to “*allocate*”--that is, “to apportion”--one-third of the funds to affected high school districts and elementary school districts in the county. . . .” The remaining actions the statute authorizes, (1) deciding how to apportion the funds required to be allocated to the school districts in proportion to how they have been “affected,” (2) deciding whether to increase the schools’ portion to more than one-third, and, (3) deciding how to divide some portion of the funds among the functions set forth in Mont. Code Ann. § 7-6-2225(3)(a) to (f), have clearly been left to the discretion of the county governing body.

In Mont. Code Ann. § 15-37-117(1)(e)(ii), the legislature also directed the allocation of Tax funds to a county and to school districts. In that context, it provided that the funds be

allocated “33 1/3 % to the county . . . ; 33 1/3 % to the elementary districts . . . ; and 33 1/3 % to the high schools. . . .” This provision was enacted as an amendment to Mont. Code Ann. § 15-37-117 in 1989 Mont. Laws, ch. 672, § 8. The same bill, in the next succeeding section, adopted Mont. Code Ann. § 7-6-2225, the statute that contains the language at issue here. *Id.*, § 9. Montana Code Annotated § 15-37-117(1)(e) does not allocate funds to the county for “proportional” distribution to the “affected” school districts. To the contrary, the *legislature* has “allocated” the money by providing that the State will pay the county and the districts according to a strict formula set forth in the statute. Given the proximity of § 8 of the bill, amending Mont. Code Ann. § 15-37-117, and § 9, enacting Mont. Code Ann. § 7-6-2225, it can safely be presumed that if the legislature had intended in Mont. Code Ann. § 7-6-2225 to allocate the Account funds one-third to the county, one-third to the high school district, and one-third to the elementary districts, it would have done so in specific language similar to that used in the allocation in Mont. Code Ann. § 15-37-117(1)(e)(ii).

THEREFORE IT IS MY OPINION:

When funds are expended from the Hard-Rock Mining Reserve Trust Account due to closure of a hard-rock mine or a layoff of more than 50 percent of a hard-rock mine’s average work force under the Mont. Code Ann. § 7-6-2225, the county governing body must allocate at least one-third of the funds to elementary and high school districts in the county that it determines have been affected by the mine closure or reduction in force, in the proportion that it determines in its discretion to be proper in response to the impacts of the closure or reduction in force. The county governing body then has the discretion to either give the affected districts additional money or to disburse the remaining funds not allocated to the school districts for the purposes provided in Mont. Code Ann. § 7-6-2225(3)(a) to (f).

Sincerely,

STEVE BULLOCK  
Attorney General

sb/mmm/jym