

August 14, 2008

Mr. John I. Petak, III  
Stillwater County Attorney  
P.O. Box 179  
Columbus, MT 59019-0179

Re: Opinion Request

Dear Mr. Petak:

You have requested an opinion from the Attorney General regarding the authority of the Stillwater County Solid Waste Board (“Board”) to set salaries for the county employees who assist with Board functions pursuant to Mont. Code Ann. § 75-10-112. Since your question is controlled by an existing formal opinion of this office, it has been determined that a letter of advice rather than a formal opinion is appropriate in response to your question.

Your letter informs me that several years ago, the Stillwater County Commission (“Commission”) created a Solid Waste District (“the District”) pursuant to the general authority of Mont. Code Ann. § 7-1-201. A dispute has arisen between the Commissioners and the Board regarding the authority to determine the compensation of the employees who staff the District. You have informed me that the employees who serve the District are paid through the county payroll and receive benefits as county employees. For purposes of this question they are therefore considered county employees. 39 Op. Att'y Gen. No. 38 at 155 (1981). You have written a formal opinion advising that by law that authority rests with the Commission. The District Board has asked you to seek an opinion from this office on the question.

I agree with your conclusion that this question is controlled by 47 Op. Att'y Gen. No. 11 (1998). In that opinion, Attorney General Mazurek held that the authority to determine compensation for county employees staffing a County Weed and Mosquito Control District rested with the county commission, not with the district board. The board in question in that opinion, like the Board at issue here, was created pursuant to Mont. Code Ann. § 7-1-201. The opinion observed:

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With the exception of a public library board of trustees and an airport authority, the proposed budgets of all appointed boards are subject to approval by the local governing body. Mont. Code Ann. § 7-6-2348(1). The board of county commissioners may revise and change any amounts in the proposed budget, including wages and salaries. Mont. Code Ann. §§ 7-6-604(5)(c), -2314(1)(a), -2315(2).

The opinion went on to hold that despite the statutory authority to “provide for” the compensation of supervisors and staff, the final authority to determine compensation rested with the Commissioners.

The statutes cited in the above quote have been repealed and replaced by the County Budget Law, Mont. Code Ann. §§ 7-6-4001 *et seq.* However, the District’s budget is still subject to revision and approval by the commission. Mont. Code Ann. § 7-1-201(16).

The cited opinion recognizes that “statutory powers differ from board to board” and limits the opinion to the weed and mosquito control board (and another board not involved here). I have reviewed the statutes relevant to solid waste and mosquito control district boards and have concluded that the statutes provide the Board with no powers that would distinguish it from the mosquito control board considered in the opinion.

Montana Code Annotated tit. 7, ch.13, pt. 2 contains the specific provisions applicable to county solid waste management districts. Montana Code Annotated § 7-13-215 describes the power of the district board: “Except for powers specifically reserved by the counties in the resolution creating the district, the board has the powers and duties provided in 75-10-112 as well as any additional powers granted the board in the resolution.” The resolution creating the District contains no language conferring on the District Board the authority to set compensation for its staff. Montana Code Annotated § 75-10-112 empowers a “local government”, which by definition may be a solid waste management district, Mont. Code Ann. § 75-10-103(4), to “employ appropriate personnel to carry out the provisions of [Mont. Code Ann. Tit. 75, ch. 10, pt. 4].” No provision of the statute, however, confers authority on the District Board to set the compensation of the county employees who serve it.

47 Op. Att’y Gen. No. 11 (1998) provides the analytical framework that governs this case. The general county budget laws control with respect to fixing the compensation of the employees who serve boards established pursuant to Mont. Code Ann. § 7-1-201. In this case the statutes governing the Stillwater County Solid Waste District do not vary in any significant way from those considered in the cited opinion. I therefore agree with your conclusion that the Commission, and not the Board, has the authority to fix compensation for the employees serving the district.

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I hope this is helpful. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN

Chief Civil Counsel

cdt/jym