

January 9, 2009

Mr. Michael B. Hayworth  
Rosebud County Attorney  
County Courthouse  
P.O. Box 69  
Forsyth, MT 59327-0069

Re: Funding Options for Rosebud Health Care Center

Dear Mr. Hayworth:

You have requested an opinion from the Attorney General on questions relating to funding options for the Rosebud Health Care Center. Since your questions are answered by clear provisions of statute, it has been determined that a letter of advice, rather than a formal opinion, is appropriate in responding to your letter.

The Rosebud Health Care Center is located in Forsyth, Montana, and was constructed as a county hospital under the authority of Mont. Code Ann. § 7-34-2201. The building is owned by Rosebud County and is leased to a private, nonprofit organization which operates the facility. The Rosebud Health Care Center is requesting imposition of a countywide tax levy to fund its operations.

A hospital district, known as the Colstrip Medical District, already exists in Rosebud County. The Colstrip Medical District levies a tax on property within the district to support the operation of the Colstrip Medical Center, which provides outpatient and emergency services in the Colstrip area, approximately 60 miles south of Forsyth.

I. Authority of the Commissioners to Place a Mill Levy on the Ballot

You ask whether the Board of County Commissioners may place a mill levy on the ballot seeking tax revenue to fund operation of the Rosebud Health Care Center. The county commissioners' general taxing authority is set forth in Mont. Code Ann. § 7-6-2501:

Subject to 15-10-420, the board of county commissioners may levy a tax annually on the taxable property of the county for county public or governmental purposes that is necessary to defray current expenses and may levy taxes that are required by special or local statutes.

Specific taxing authority relative to health care facilities is found in Mont. Code Ann. § 7-6-2512, which provides in relevant part:

(1) Subject to 15-10-420, the board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

These provisions authorize the Board of County Commissioners to levy a tax to support and, if the Board deems it appropriate, to operate the Rosebud County Health Center, subject to the restrictions in Title 15, chapter 10, part 4 ("Limitation on Property Taxes").

Whether an election is required for imposition of the mill levy is governed by Mont. Code Ann. § 15-10-425(1):

A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy provided for in 15-10-420 by conducting an election as provided in this section.

Under the plain terms of this statute, an election is required in three instances: (1) when a new mill levy is proposed; (2) when a mill levy subject to voter approval is to be increased; and (3) when the mill levy proposed is greater than what the formula set forth in 15-10-420 would allow. Since you propose a new mill levy, an election would be required.

## II. Authority to Tax Property Within the Existing Hospital District

One significant consideration relative to the Commissioner's authority to levy a county-wide tax is the third sentence of Mont. Code Ann. § 7-6-2512, which states: "If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district." This provision, by its plain terms, excludes all property within the Colstrip Medical District from a tax imposed under Mont. Code Ann. § 7-6-2512. As a general rule, the plain and unambiguous language of a statute controls. 52 Op. Atty. Gen. No. 4, ¶ 25 (2007).

I recognize there may be different interpretations of the language in Mont. Code Ann. § 7-6-2512. For example, it could be construed to be temporal in nature, i.e., the exemption applies only when the hospital district is created after approval and imposition of the county-wide tax. However, there is no logical reason for this distinction and the plain language of Mont. Code Ann. § 7-6-2512 does not support it. The statute does not distinguish between existing and future districts; it simply says, "[i]f a hospital district is created under Title 7, chapter 34, part 21," then the exemption applies. When construing statutes, I am not permitted to insert what has been omitted, or omit what has been inserted. Mont. Code Ann. § 1-2-101; 52 Op. Atty. Gen. No. 6, ¶ 16 (2008). The language of Mont. Code Ann. § 7-6-2512 is certainly broad enough to include both, i.e., property within an existing hospital district, or within one that is created afterward. The opinions expressed herein are, of course, limited to the former situation, since those are the facts presented.

In answer to this question, then, the Rosebud County Commissioners may place a mill levy on an election ballot to support the Rosebud County Health Center, as long as the levy complies with Mont. Code Ann. § 15-10-420. Even if approved by the voters, however, the tax may not be imposed on property within the Colstrip Medical District.

Anticipating this response, you have inquired as to other potential funding sources. Aside from the tax levy discussed in Part I, above, the only other funding options for a county hospital that is not part of a hospital district are found in Title 7, chapter 34, part 24 ("Financing of County-Operated Health Care Facilities"). Montana Code Annotated § 7-34-2401 authorizes the establishment of a depletion allowance reserve fund "for the replacement and acquisition of property and equipment[.]" "Money for the depletion allowance reserve fund may be derived from (1) public and private grants, or (2) money collected by the health care facility for which the fund is created, from or for indigent patients or residents, that is in excess of the expenses incurred for the care of the patients or residents." Mont. Code Ann. § 7-34-2402.

In addition, Mont. Code Ann. § 7-34-2411 authorizes the county to borrow money and issue bonds when “acquiring, erecting, furnishing, equipping, expanding, improving or maintaining” a health care facility or boarding home. Revenue may be derived from a variety of sources, including fees and payments for health care or boarding home services; taxes levied under 7-6-2512 or 7-34-2417 for a health care facility; grants or contributions from the federal government; or any other source. Mont. Code Ann. § 7-34-2411(1)(a)-(d). There are limitations on bond authority, see Mont. Code Ann. § 7-34-2413, and a bond derived from taxes levied requires voter approval. Mont. Code Ann. § 7-34-2414. Also, because of the reference in Mont. Code Ann. § 7-34-2411(1)(b) to Mont. Code Ann. § 7-6-2512, any taxes levied to retire bonds cannot include taxation of property within the Colstrip Medical District.

III. Authority to Use Public Funds to Support a County Hospital Operated by a Private, Nonprofit Organization

Your next question involves the use of public money to fund a county hospital that is operated by a private entity. This question is answered by 43 Op. Atty. Gen. No. 70 (1990), in which Attorney General Racicot held that public money may be used to fund a private nonprofit nursing home operated for the benefit of county residents, as long as the home complies with the admission standards and other requirement provided by law. The opinion cites case law which recognizes that the government may fund a private nonprofit hospital because the expenditure of funds would promote public health. Id. at 266.

You have also advised the Commissioners that a new or expanded hospital district could be created, thus offering different funding alternatives under Title 7, chapter 34, part 21. While I agree that those are viable options, they are not the subject of this opinion since your question contemplates maintenance of the Rosebud Health Care Center as a county hospital outside of a hospital district.

IV. Double Taxation

Your next question whether a countywide mill levy under Mont. Code Ann. § 7-6-2512 would amount to double taxation since there is an existing hospital district in the county. As noted in the discussion above, voters may approve a countywide mill levy, but the levy may not be applied to property within the Colstrip Medical District under the plain language of Mont. Code Ann. § 7-6-2512. Therefore, there is no question of double taxation under Mont. Code Ann. § 7-6-2512.

I am aware of case law and a prior Attorney General opinion stating that double taxation is permissible if the taxes are imposed for different purposes, 47 Op. Atty Gen. No. 6 (1997); Lake Havasu City v. Mohave County, 675 P.2d 1371 (Ariz. Ct. App. 1983), but that authority is not relevant here because the Legislature has declared in Mont. Code Ann. § 7-6-2512 that property within a hospital district created under Title 7, chapter 34, part 21, may not be taxed.

V. Assumption of Ownership and Operation by the County and Funding of Losses

Your final question involves outstanding debt or losses in the event Rosebud County assumes operation of the Rosebud Health Care Center. I find nothing in the statutes that would restrict the county's ability to assume operation of the facility, even if the facility has outstanding debt or losses. The statute authorizing a tax levy for health care facilities (Mont. Code Ann. § 7-6-2512) is broad enough to include a tax for any of the purposes authorized therein ("to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities"). The statute authorizing issuance of bonds (Mont. Code Ann. § 7-34-2411) is similarly broad, subject only to the restrictions in Mont. Code Ann. § 7-34-2413:

**Limitations on bond authority.** The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(1) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(2) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

If the bonds are not paid or are not expected to be paid from the ordinary revenue of the facility, a county may levy a county tax under Mont. Code Ann. § 7-34-2417 or a general tax under Mont. Code Ann. § 7-34-2418.

Mr. Michael B. Hayworth  
January 9, 2009  
Page 6

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

Very truly yours,

JENNIFER ANDERS  
Assistant Attorney General

jma/jym

c:     Beverley J. Nile, Chair, Rosebud County Commission  
       James E. Ferguson, CEO, Rosebud Health Care Center