

VOLUME NO. 55

OPINION NO. 1

COUNTIES - Only the board of county commissioners “has general supervision over the county roads within the county”;

COUNTY COMMISSIONERS - Only the board of county commissioners “has general supervision over the county roads within the county”;

HIGHWAYS - Only the board of county commissioners “has general supervision over the county roads within the county”;

LOCAL GOVERNMENT - A local government unit possesses only those “powers provided by law;”

TAXATION AND REVENUE - An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border;

TRANSPORTATION, PUBLIC - An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border;

MONTANA CODE ANNOTATED - Sections 7-4-2102, -2121(1), (2), 7-14-102, -201, -221;

MONTANA CONSTITUTION OF 1972 - Article XI, section 4(1)(c).

HELD: An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border.

July 17, 2013

Mr. Scott Twito  
Yellowstone County Attorney  
P.O. Box 35025  
Billings, MT 59107-5025

Dear Mr. Twito:

[P1] You have requested my opinion as to three related questions, but I have determined that an answer to the first question, which I have restated below, is dispositive:

Is an urban transportation district authorized to tax and manage county roads within its border or is it restricted to operating general public transportation systems?

[P2] Your letter informs me that in 1983 the “Lockwood Urban Transportation District” was formed to facilitate construction of the “Johnson Lane Interchange.” In 1984 the Board of County Commissioners of Yellowstone County and the board of the Lockwood District met and agreed that the mill levy raised for the district would be dissolved when the interchange was completed. The district subsequently, in 1987, informed the Board that the interchange project was complete and the mill levy should be discontinued. Since that time no levy has been imposed or collected for the Lockwood District.

[P3] The Lockwood District was inactive for the next 14 years until the District requested a portion of the County’s gas tax revenues for use within the District. The renewed request raised the question of whether an urban transportation district may tax and manage county roads and, if so, whether the Lockwood District may do so at the present time without a new election.

[P4] A local government unit possesses only those “powers provided by law.” Mont. Const. art. XI, § 4(1)(c). Here, the Lockwood District is limited to the powers and purposes designated by Mont. Code Ann. § 7-14-201 to -246, which establishes urban transportation districts. The general purpose of an urban transportation district is provided in Mont. Code Ann. § 7-14-201: “to supply transportation services and facilities to district residents and other persons.” Unfortunately, “transportation services and facilities” is not separately defined, but the use of the terms “services and facilities” logically denotes a public transportation system, such as public bus service (often referred to as “mass transit”), as opposed to road creation or maintenance.

[P5] Reading Mont. Code Ann. § 7-14-201 to limit the purpose and authority of urban transportation districts to operating public transportation systems is supported by Mont. Code Ann. § 7-14-102, which provides that the Department of Transportation shall allocate certain funds “among the cities and urban transportation districts of the state that operate . . . *general public transportation systems*.” Emphasis added. Consequently, each of the six districts that DOT provides funding to, such as Helena Area Transit Services, runs a mass transit type of public transportation system. Likewise, Mont. Code Ann. § 7-14-221, provides that a district “shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.” Authorizing service outside the district boundary makes sense in

reference to public transportation services, where, for example, a bus route may run past the district line, but is incongruous with building or maintaining roads.

[P6] This interpretation is further supported by the fact that only the board of county commissioners “has general supervision over the county roads within the county,” including the ability to “survey, view, lay out, record, open, work, and maintain county roads.” Mont. Code Ann. § 7-4-2102. More specifically, the board may divide the county into “road districts.” Mont. Code Ann. § 7-4-2121(1). If the board opts not to divide the county into road districts, “the county constitutes one road district.” Mont. Code Ann. § 7-4-2121(2). To consider urban transportation districts as having the power to create, manage or levy taxes for public roads conflicts with the express power granted to the board of county commissioners to control country roads and divide the county into road districts.

[P7] You also ask whether the Lockwood District may tax “District properties for road improvements/maintenance without a new election,” and whether any such future levy would be subject to statutory levy limitations. As I have determined that the Lockwood District, as an urban transportation district, is not statutorily authorized improve or maintain roads, it is unnecessary that I address these remaining questions.

THEREFORE, IT IS MY OPINION:

An urban transportation district is restricted to operating general public transportation systems and is not authorized to tax and manage county roads within its border.

Sincerely,

TIMOTHY C. FOX  
Attorney General

tcf/jss/jym