VOLUME NO. 38 OPINION NO. 51

COUNTIES - Interlocal agreements, funding participation in;
COUNTY COMMISSIONERS - Tax to fund interlocal recreation agreement, power to levy;

INTERGOVERNMENTAL COOPERATION - County funding of interlocal recreation agreement;
TAXATION - County, special tax for interlocal recreation agreement;
TAXATION - County, general mill levy to fund interlocal agreement;
MONTANA CODE ANNOTATED - Sections 7-6-2501, 7-11-108, 7-16-2101, 7-16-2102, 7-16-2103.

HELD: 1. A county may not levy a special tax pursuant to section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for cooperative management of recreational programs and facilities if the facilities to be operated and maintained under the agreement do not belong to the county.

2. A county may include the expenses of participation in a valid interlocal agreement in its annual county mill levy under section 7-6-2501, MCA.

1 November 1979

James C. Nelson, Esq.
Glacier County Attorney
Glacier County Courthouse
P.O. Box 1244
Cut Bank, Montana 59427

Dear Mr. Nelson:

You have requested my opinion on the following questions:

1. Is a county authorized to levy a tax under section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for the creation of an Interlocal Recreation Department with charge of recreational programs and facilities for the city, county, and school district involved in the agreement?

2. If the county is not authorized to levy the tax under section 7-16-2102, MCA, from what source may it lawfully appropriate funds for performance of the interlocal agreement?

Sections 7-11-101 through 7-11-108, MCA, provide for the establishment of agreements between local governmental units to furnish services and facilities to residents on a basis of mutual advantage. Section 7-11-108, MCA, gives the contracting public agencies the specific power to appropriate funds for implementation of the interlocal agreement.

According to your inquiry, Glacier County, the city of Cut Bank, and Cut Bank High School District No. 15 desire to enter into an interlocal agreement providing for the creation of an Interlocal Recreation Department that would have charge of all recreational programs and facilities in accordance with the authority granted from each of the governmental bodies. The recreational facilities to be employed are not owned by Glacier County. For at least the first year of the agreement, the county proposes to allocate revenue sharing monies to fund its participation in the agreement. Your inquiry concerns the source from which the county may lawfully appropriate funds in the future for continuing performance of the contract.

Section 7-16-2101, MCA, gives the board of county commissioners the power to erect and maintain certain cultural, social, and recreational facilities. Section 7-16-2102(1) MCA, goes on to provide for a special tax levy for operating the facilities after their construction. The tax, however, is specifically designated for use only for "county-owned" civic, youth, and recreation centers. Furthermore, the tax monies and the income from the facilities must be kept in a separate fund deposited with the county treasurer and can be used for no other purposes than those of the facilities owned by the county. § 7-16-2103, MCA.

It is apparent from the unambiguous language of these statutes that the Legislature intended to authorize the county commissioners to levy a special tax on property in the county only for the limited purpose of operating cultural, social, and recreational facilities that are owned by the county itself. Therefore, it is my opinion that the tax authorized by section 7-16-2102, MCA, may not be used to fund the county's participation in the interlocal agreement in question because the recreational facilities to be employed do not belong to Glacier County.

As stated earlier, section 7-11-108, MCA, gives the board of county commissioners the power to "appropriate funds" for legitimate interlocal agreements. § 7-11-108, MCA.

There is no indication in the statute that the funds must be derived from a special tax levy. Section 7-6-2501, MCA, authorizes the annual levy of county taxes "for county purposes as may be necessary to defray the current expenses thereof...." Therefore, as long as the interlocal agreement is a valid obligation and expense of the county, tax monies collected pursuant to the general county mill levy may be used to fund the county's part in the agreement.

THEREFORE, IT IS MY OPINION:

1. A county may not levy a special tax pursuant to section 7-16-2102, MCA, to fund its participation in an interlocal agreement providing for cooperative management of recreational programs and facilities if the facilities to be operated and maintained under the agreement do not belong to the county.

2. A county may include the expenses of participation in a valid interlocal agreement in its annual county mill levy under section 7-6-2501, MCA.

Very truly yours,

MIKE GREELY
Attorney General