VOLUME NO. 40 OPINION NO. 19

CITIES AND TOWNS - Use of gasoline tax allocations for constructing storm sewers and drains;
HIGHWAYS - City streets included in Highway Code;
HIGHWAYS - Use of gasoline tax allocations for construction, maintenance and repair;
MUNICIPAL CORPORATIONS - Authority to use gasoline tax allocations in general obligation bond sinking fund;
TAXATION AND REVENUE - Use of gasoline tax allocations for city streets;
MONTANA CODE ANNOTATED - Title 60, chapter 1; sections 1-2-101, 7-7-4201 to 7-7-4275, 15-70-101, 60-1-103(4), 60-1-103(17), 60-1-103(18), 60-1-103(20).

HELD: 1. A city may use its share of gasoline tax allocation under section 15-70-101(2), MCA, for construction of storm sewers and drains in

and under city streets for removal of runoff water.

2. The gasoline tax allocation moneys may be put into a sinking fund for general obligation bonds which are sold specifically for the purpose of constructing the storm sewers and drains in and under city streets.

23 August 1983

James R. Weaver
City Attorney
City of Columbia Falls
P.O. Box 329
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Dear Mr. Weaver:

You requested an opinion as to whether the city of Columbia Falls can use its share of gasoline tax allocation under section 15-70-101, MCA, for construction of storm drains or sewers in and under city streets. You stated that the storm drains or sewers are to prevent damage to those streets.

Section 15-70-101, MCA, describes the disposition and allocation of gasoline and fuel tax revenues to state and local governments. Subsection (2) provides:

> All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

The rules of statutory construction limit the uses of the money in question to those listed in this subsection. § 1-2-101, MCA; Chennault v. Sager, 37 St.

Rptr. 857, 610 P.2d 173, 176 (1980). The question, therefore, is whether "construction, reconstruction, maintenance, and repair" of the streets includes constructing storm sewers and drains in and under the streets.

The Montana Highway Code, Tit. 60, ch. 1, MCA, contains definitions pertinent to construction and repair of city streets:

> "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings. [§ 60-1-103(4), MCA.]
>
> "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization. [§ 60-1-103(20), MCA.]
>
> "Highway" includes rights-of-way or <u>other</u> interests in land, embankments, retaining walls, culverts, sluices, <u>drainage structures</u>, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures. [§ 60-1-103(17), MCA, emphasis added.]

A city street is a highway within the context of these definitions. § 60-1-103(17), (18), MCA.

The question now is whether the term "drainage structures" includes storm sewers and storm drains. Statutory construction requires words to be given their usual and ordinary meaning. <u>Matter of McCabe</u>, 168 Mont. 334, 544 P.2d 825, 828 (1975). Clearly, storm drains are drainage structures. A storm sewer is generally defined as an artificial water course for draining away surface waters from the streets. <u>DiLorenzo</u> v. <u>Village of Endicott</u>, 333 N.Y.S.2d 456, 458 (1972); American Heritage Dictionary, New College Edition. "Drainage structure" has been defined as an "artificial channel or trench constructed for drainage purposes." <u>Jefferson</u>

Davis County v. Riley, 130 So. 283, 285 (Miss. 1930). It is my opinion that "highway" within the Montana Highway Code includes storm drains and storm sewers constructed to drain water runoff away from the streets. Therefore, the construction of those sewers and drains falls within the permissible scope for expenditure of gasoline tax allocations under section 15-70-101, MCA.

You also ask whether the allocation funds may be used to fund a sinking fund for a general obligation bond issue to construct the storm drains and sewers. The statutes describing the disposition of the gasoline tax allocations do not restrict the use of the funds except that they must be used exclusively for city streets. The statutes governing municipal financing do not appear to prohibit the use of such moneys in a sinking fund for general obligation bonds. See §§ 7-7-4201 to 4275, MCA. It thus appears that such an arrangement is legal, as long as the bonds issued are for the specific purpose of constructing storm sewers and drains.

THEREFORE, IT IS MY OPINION:

1. A city may use its share of gasoline tax allocation under section 15-70-101(2), MCA, for construction of storm sewers and drains in and under city streets for removal of runoff water.

2. The gasoline tax allocation moneys may be put into a sinking fund for general obligation bonds which are sold specifically for the purpose of constructing the storm sewers and drains in and under city streets.

Very truly yours,

MIKE GREELY
Attorney General