VOLUME NO. 42 OPINION NO. 126

FIRE DISTRICTS - Application of property tax limitation in Title 15, chapter 10, part 4;
FIRE DISTRICTS - Lack of authority to issue bonds;
TAXATION AND REVENUE - Application of property tax limitation in Title 15, chapter 10, part 4;
TAXATION AND REVENUE - Election requirement for tax increase to be in effect for more than one year under section 15-10-412(9), MCA;
MONTANA CODE ANNOTATED - Sections 7-33-2104, 7-33-2109, 15-10-412(9);
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 80 (1988), 38 Op. Att'y Gen. No. 87 (1980).

HELD: 1. 38 Op. Att'y Gen. No. 87 (1980) is still valid insofar as it holds that rural fire districts may not issue bonds for fire district purposes.

2. A rural fire district's purchase of real property and construction of a fire hall fall within the contemplation of section 15-10-412(9), MCA.

3. Section 15-10-412(9), MCA, does not require an election to be held each year when the fire district proposes a long-term project that would entail the tax increase to be in effect for more than one year, so long as the voters are specifically notified of the type and extent of the increased tax liability when they vote on the increase.

29 November 1988

Thomas R. Scott
Beaverhead County Attorney
2 South Pacific, CL. #2
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Dear Mr. Scott:

You have requested my opinion concerning the following questions:

1. Is 38 Op. Att'y Gen. No. 87 (1980) still valid insofar as it holds that rural fire districts may not issue bonds for fire district purposes?

2. Do the purchase of real property and the construction of a fire hall fall within the contemplation of section 15-10-412(9), MCA?

3. If the answer to the second question is yes, is it necessary to hold an election each year with respect to a proposed long-term project?

Your questions arise from a proposal of the Beaverhead County rural fire district to purchase land and build a fire hall in conjunction with the city of Dillon. The establishment and operation of rural fire districts are governed by Title 7, chapter 33, part 21, MCA. Such districts may be operated by the county or by a board of trustees. § 7-33-2104, MCA. The county is authorized to levy a tax upon the properties in the rural fire district for the operation of the district. § 7-33-2109, MCA.

In 38 Op. Att'y Gen. No. 87 at 301 (1980), I held that rural fire districts are foreclosed by action of the Montana Legislature from issuing bonds to raise money for fire district purposes. I also held that fire districts have implied authority to secure financing for fire district equipment and facilities. I am unaware of any change in the law that would alter my opinion on those matters.

You have also inquired concerning the application of section 15-10-412(9), MCA, to the district's purchasing of real property and construction of a fire hall. That portion of the statute, which was enacted following the passage of Initiative No. 105 in 1986, provides:

> (9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:
>
> (a) <u>a finding that there are insufficient funds to adequately operate the taxing unit</u> as a result of 15-10-401 and 15-10-402;
>
> (b) an explanation of the nature of the financial emergency;
>
> (c) an estimate of the amount of funding shortfall expected by the taxing unit;

> (d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;
>
> (e) a finding that there are no alternative sources of revenue;
>
> (f) a summary of the alternatives that the governing body of the taxing unit has considered; and
>
> (g) a statement of the need for the increased revenue and how it will be used. [Emphasis added.]

The Beaverhead County rural fire district is operated by a board of trustees, and is therefore a "taxing unit" for the purpose of this provision. 42 Op. Att'y Gen. No. 80 (1988). Thus, if the board of trustees determines that it must acquire the real property and construct a fire hall in order to "adequately operate" the fire district and requires funding in addition to that otherwise allowed under section 15-10-412, MCA, it may proceed under this subsection.

With regard to your last question, one of the procedural requirements under section 15-10-412(9), MCA, is that the governing body adopt a resolution and the voters approve the increase in taxes to be levied by the taxing unit. The statute, however, is silent as to whether there must be voter approval every year for a long-term project that would entail the tax increase to be in effect for more than one year.

The purpose of section 15-10-412(9), MCA, is to require voter notification and approval of increased tax liability when a taxing unit is in need of increased revenue. In cases such as yours, it would not make sense to allow approval of increased tax liability for a long-term financial obligation and then permit disapproval in subsequent years even though the financial obligation still exists. Thus, where voters are specifically notified of the type and extent of increased tax liability when they vote on the increased tax, the approval should be adequate for future years.

THEREFORE, IT IS MY OPINION:

1. 38 Op. Att'y Gen. No. 87 (1980) is still valid insofar as it holds that rural fire districts may not issue bonds for fire district purposes.

2. A rural fire district's purchase of real property and construction of a fire hall fall within the contemplation of section 15-10-412(9), MCA.

3. Section 15-10-412(9), MCA, does not require an election to be held each year when the fire district proposes a long-term project that would entail the tax increase to be in effect for more than one year, so long as the voters are specifically notified of the type and extent of the increased tax liability when they vote on the increase.

Very truly yours,

MIKE GREELY
Attorney General