

VOLUME NO. 44

OPINION NO. 11

CONSOLIDATION - Creation of multijurisdictional service district within existing district to increase mill levy;

INTERGOVERNMENTAL COOPERATION - Creation of multijurisdictional service district within existing district to increase mill levy;

LIBRARIES - Creation of multijurisdictional service district within existing district to increase mill levy;

LOCAL GOVERNMENT - Creation of multijurisdictional service district within existing district to increase mill levy;

TAXATION AND REVENUE - Creation of multijurisdictional service district within existing district to increase mill levy;

MONTANA CODE ANNOTATED - Sections 7-11-1101 to 7-11-1112, 22-1-316.

HELD: A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district where the proposed multijurisdictional service district will not increase the existing service area, will not serve people who are not currently receiving the service, and will not equalize the tax burden among those who will be using the service.

June 11, 1991

Larry J. Nistler  
Lake County Attorney  
106 Fourth Avenue East  
Polson MT 59860

Dear Mr. Nistler:

You have requested an opinion on the creation of a multijurisdictional library service district within an existing library district. In particular, you ask:

May a multijurisdictional library service district be created within an existing library district, in order to increase the total mill levy within the new district? If so, will the mill levy violate the restrictions imposed by Initiative 105 (I-105), §§ 15-10-401 to 412, MCA?

Sections 7-11-1101 to 1112, MCA, govern the creation of multijurisdictional service districts. Under 7-11-1101(1), MCA, a multijurisdictional service district may be formed by municipalities to provide "a higher level of service than is available through the local governments forming such a district."

Libraries are expressly included in the types of services provided through multijurisdictional districts. § 7-11-1102, MCA. A multijurisdictional service district is established by an interlocal agreement among participating local

government jurisdictions. § 7-11-1105(1), MCA. As far as is practical, the boundary of a proposed district must follow precinct, school district, municipal or county lines. § 7-11-1105(3), MCA. Under section 7-11-1111(3), MCA, the interlocal agreement that establishes a district "may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions."

You state that a proposal has been made to the Polson Library Board to create a new multijurisdictional service district. The proposed district would follow established school district lines within Lake County. You further state that the intent in the creation of the new district is to impose a new mill levy within this service district to supplement the funds already received by the Polson Library. Currently, the Polson Library is funded by a property tax on city residents, as well as a portion of a county-wide levy. While you do not indicate whether the Polson Library Board has a formal agreement with Lake County, you state that the revenues from the county-wide mill levy are currently divided among the five libraries in the county, with the Polson Library receiving 33 percent of the levy's revenues. The people who would be taxed under the new multijurisdictional service district currently receive services from the Polson Library and are taxed under the city mill levy and the county-wide mill levy for provision of library services. The proposal calls for the replacement of the city levy with the multijurisdictional service district levy, while the county-wide levy for library services would continue to be imposed on those taxpayers within the proposed district boundaries.

Your first question is whether a local library board may create a multijurisdictional service district within an existing library district in order to increase the total mill levy within the new district. In order to create a multijurisdictional district, there must be a purpose to provide either a higher level of service or services that are not otherwise available. § 7-11-1101, MCA. Because the city and county may provide library services through a joint city-county library under section 22-1-316, MCA, the initial consideration here is whether the proposal calls for the provision of a "higher level of service." Your question is candidly framed in terms of whether a multijurisdictional service district may be formed to increase the mill levy on those provided services. Under the plain language of section 7-11-1101, MCA, such a purpose is not permissible absent provision of a higher level of service.

You acknowledge that you do not necessarily anticipate that services will be provided at a higher level, but rather hope to shift some of the tax burden from city property owners. You suggest that additional employees and perhaps a computer system may be added to the Polson Library with the additional revenue, but that the services are already being provided on a county-wide basis. It is doubtful that a "higher level of service" will be provided when the proposed district will neither increase the service areas nor serve people who

are not currently receiving services. Accordingly, the purpose of the proposed multijurisdictional service district is to generate more revenue.

The legislative history of the multijurisdictional statutes indicates that multijurisdictional service districts were intended to perform two main functions: (1) allow cities and counties to enter into interlocal agreements to provide services to suburban areas without the necessity of taxing the entire county for provision of those services; and (2) make only those people within the multijurisdictional district responsible for the services that they use. See Exhibit A submitted by the Montana League of Cities and Towns as testimony at the Hearing on House Bill 239, Minutes of Senate Local Government Committee, March 7, 1985. Many examples are cited in the legislative history of the types of problems that the statutes on multijurisdictional districts were intended to address. Alec Hansen of the Montana League of Cities and Towns stated that the provisions were intended to provide "more equal financing for services in Montana" and gave the following example:

The city of Bozeman is particularly interested in this bill as a fair way of financing its recreation programs. Under the existing law they do not have an effective way of financing these recreation programs. In Bozeman, outsiders use the facilities but the people in the city have to pay for it. With this bill, both the people in the city and those outside the city would be sharing in the cost of the recreational services.

Minutes, House Local Government Committee on House Bill 239, Feb. 2, 1985, at 5.

Mr. Hansen further noted in response to a question from Representative Sands that if the recreation district was created, then the cost previously incurred by the city or county should be assumed by the district. He suggested that the costs for services provided by the district would no longer be the responsibility of those taxpayers in other jurisdictions who would not be using the services. *Id.* at 7. Your proposal is therefore proper to the extent that the taxpayers within the district would be responsible for the services they use. However, the legislative history suggests that those taxpayers not using the service should then be relieved of any tax that would support the same service.

One main purpose of the statutes allowing creation of multijurisdictional districts was to provide services to suburban areas without having to tax the entire county for the services. Your proposal would require the creation of a multijurisdictional service district while maintaining county-wide taxation and a county-wide service district. The multijurisdictional district would be a superfluous entity with respect to provision of services, and would be created solely for the purpose of raising revenue. This purpose was not envisioned by the Legislature and is contrary to the expressed intent of the statute.

Section 7-11-1111(3), MCA, supports this reasoning, specifically addressing the creation of a multijurisdictional service district for libraries:

(3) An interlocal agreement under this part may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

This provision suggests that in order to provide library services through a multijurisdictional service district the proposed interlocal agreement should enlarge an existing service district. The proposal before the Library Board is to create a multijurisdictional service district within an existing library district. The proposal does not intend to enlarge an existing library district or city or county library district, but only intends to increase the tax burden. Further, your request indicates that there is currently an agreement between the county and the city in which the Polson Library receives 33 percent of the revenues for the county-wide levy for library services. Under section 7-11-1111(3), MCA, an interlocal agreement for a multijurisdictional service district may not supersede such an existing agreement.

In conclusion, while statutes on multijurisdictional service districts were intended to expand the services available to people in districts outside urban areas and thereby equalize the tax burden by allowing cities and counties to create districts in which only those who used the services would pay for them, the statutes were not intended as a mechanism to create a service district within an existing district in order to increase the mill levy and impose an additional tax burden on those who are already receiving the service. Because a new multijurisdictional service district may not be created within an existing service district to increase the total mill levy within the district, I need not address your question concerning application of I-105.

THEREFORE, IT IS MY OPINION:

A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district where the proposed multijurisdictional service district will not increase the existing service area, will not serve people who are not currently receiving the service, and will not equalize the tax burden among those who will be using the service.

Sincerely,

MARC RACICOT  
Attorney General