

VOLUME 31

Opinion No. 18

CITIES AND TOWNS; Taxation, all purpose levy—TAXATION; Levy; all purpose for cities and towns—Sections 84-4701.1 through 84-4701.5, R.C.M. 1947.

HELD: A city or town exercising the all purpose levy option would necessarily have to include a general obligation bond levy within such annual mill levy.

June 15, 1966

Mr. Albert Leuthold
State Examiner
Mitchell Building
Helena, Montana

Dear Mr. Leuthold:

You have asked my opinion on: whether a city or town which has adopted the all purpose exclusive annual mill levy option authorized by Chapter 82, Laws of Montana, 1965, may levy additional taxes for retirement of general obligation bonds?

Chapter 82, sections 1 through 5, Laws of Montana, 1965, appear as sections 84-4701.1 through 84-4701.5, R.C.M. 1947. Section one provides in part:

It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose exclusive annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. . . .

A city or town exercising the option to make an all purpose exclusive mill levy would necessarily have to include a general obligation bond levy within such annual mill levy.

Generally a statute is to be construed as a whole, and the legislative intent is to be ascertained from the whole context. **Short v. Karnop**, 84 Mont. 276, 276 P. 278. The language of a statute must be given its plain and ordinary meaning unless the context of the act indicates otherwise. **Jones v. Burns**, 138 Mont. 268, 357 P. 2d 22. Section one of the statute provides for "an all purpose exclusive annual mill levy." The plain and ordinary interpretation of this phrase together with the whole act is that only one mill levy for all purposes may be made each year. This conclusion is supported by construing the phrase "... in lieu of the multiple levies authorized . . ." as substituting one annual levy for all multiple levies. Accordingly, such multiple tax levies as are provided for in sections 11-2321 and 11-2322, R.C.M. 1947, for retirement of outstanding bonds would have to be included in the annual all purpose levy. All bonds issued by a city or town are by statute irrevocably guaranteed for prompt payment when both principal and interest come due. Section 11-2320, R.C.M. 1947. To insure prompt payment, a city that has exercised the option to make an all purpose levy would have to levy for sufficient funds for retirement of all outstanding bonds, as any levies in addition to the annual levy are expressly eliminated by the act.

It is significant that the Montana act was patterned after sections 19-1309 through 19-1312, of the Laws of Nebraska. The Nebraska legislature has amended these statutes to include:

Provided, otherwise authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all purpose levy.

This amendment allows additional levies to service and pay such outstanding bonds as general obligation bonds, and so these levies are not subjected to the limitations of the all purpose levy.

In 1965, when the Montana legislature enacted the present Montana statute the original Nebraska act had been amended. The Nebraska law in both original and amended form was available for legislative consideration, and only the original form was adopted. Failure to adopt the amendment would indicate the legislature intended to give a different meaning to the Montana statute. The fact that our legislature adopted the original act is persuasive that it is a different rule from that promulgated in Nebraska. **Kirkpatrick v. Douglas**, 104 Mont. 212, 65 P. 2d 1169.

The Montana legislature may in the future adopt the 1959 Nebraska amendment. However, until the legislature does amend the statute it is my opinion that if the all purpose levy is used by a city or town it must include all levies including those for general obligation bonds.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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