

VOLUME NO. 34

Opinion No. 39

AIRPORTS - Deposit of operating revenues. CITIES AND TOWNS - Airport revenue, where deposited; CITIES AND TOWNS - Taxation, airport revenue not part of all-purpose general fund. Sections 1-817, 84-4701.1 and 84-4701.2, R.C.M. 1947.

HELD: Revenues received by a municipality, pursuant to section 1-817, R.C.M. 1947, must be deposited in a special airport fund.

March 30, 1972

Mr. John A. Dowdall, Director
Department of Business Regulation
Mitchell Building
Helena, Montana 59601

Dear Mr. Dowdall:

I have received your letter requesting my opinion on the following question:

“When a city or town has elected to use the all-purpose annual mill levy as authorized by Sections 84-4701.1 through 84-4701.5, R.C.M. 1947, in lieu of multiple levies, does such city or town have the right to hold airport revenue and sale proceeds separate and distinct from all other revenue, or must it be placed in the all-purpose general fund?”

As you indicate, the statutes relating to the all-purpose levy for cities and towns in the state of Montana are contained in chapter 47 of Title 84, Revised Codes of Montana, 1947. Section 84-4701.1., R.C.M. 1947, provides:

“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 annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R.C.M. 1947. This act shall not be construed as repealing those statutes providing for multiple separate levies.”

Section 84-4701.2, R.C.M. 1947, provides in pertinent part:

“The moneys received from such all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.”

Pursuant to these two code provisions, cities and towns in the state of Montana are authorized to make an all-purpose annual mill levy in lieu of the multiple levies authorized by statute, and the revenues derived therefrom must be accounted for in the all-purpose fund.

The municipal airports act is contained in chapter 8, Title 1, R.C.M. 1947. Section 1-817, R.C.M. 1947, provides:

“The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the ‘ Airport Fund,’ which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this act.”

The revenues derived pursuant to section 1-817, supra, are not tax moneys raised through a mill levy pursuant to section 84-4701.1, supra, but rather, the moneys are revenues derived from the operation of the airport itself.

Section 84-4701.2, supra, requires that all moneys received through the all-purpose mill levy be deposited in the all-purpose general fund. However, this code section does not require that all moneys from any source whatsoever must be deposited in the all-purpose general fund. On the contrary, section 1-817, supra, specifically requires that all revenues derived from the operation of an airport be deposited in a special airport fund. Such special airport fund is not part of the all-purpose general fund set forth in Title 47, chapter 84, supra.

THEREFORE, IT IS MY OPINION that revenues received by a municipality, pursuant to section 1-817, supra, from the ownership, control or operation of any airport, including proceeds from the sale of airport property, must be deposited in a special fund designated the “ Airport Fund,” and that such revenues are not required to be deposited in the all-purpose general fund pursuant to section 84-4701.2, supra.

Very truly yours,

ROBERT L. WOODAHL
Attorney General