

## VOLUME NO. 36

## Opinion No. 74

**LOCAL GOVERNMENT UNITS — Defined; TAXATION — Coal severance tax; government units eligible for assistance, Sections 50-1801, 50-1806 and 50-1807, Revised Codes of Montana 1947.**

**HELD: Only counties, incorporated cities and towns, consolidated governments created pursuant to Chapter 34 of Title 11, R.C.M. 1947, and school districts are "local government units" which qualify for assistance under Chapter 18 of Title 50.**

April 22, 1976

Mr. B.J. "Swede" Goodheart  
Coal Board Chairman  
Department of Community Affairs  
25 South 8 West  
Malta, Montana 59538

Dear Mr. Goodheart:

You have requested my opinion on the following question:

What are "local government units" which qualify for assistance under Chapter 18 of Title 50, R.C.M. 1947?

The 1975 Montana Legislature in Chapter 18 of Title 50, R.C.M. 1947 established the Montana Coal Board and provided that the Board is to award grants from the local impact and education trust fund account of the coal severance tax earmarked revenue fund. Grants are to be made for the purpose, among others, of assisting "local governmental units" in coping with the problem of providing service when demand for services is enlarged by large scale coal developments. See sections 50-1801 and 1806. Section 50-1807 provides that the Department of Community Affairs shall designate "counties, towns, school districts, and other government units" which have high growth rules for receipt of at least 50% of the money from the "local impact and education trust fund". Section 50-1809 provides that the governing body of a "town, county, or school district or another local or state governmental unit or agency" may apply for a grant.

Your problem arises from the fact that the legislature failed to define the term "local governmental unit" in Chapter 18. It is to be presumed, however, that the legislature passed a law with full knowledge of all existing law on the same subject. **Fletcher v. Page**, 124 Mont. 114, 200 P.2d 484 (1950). We may therefore look to the law which was in effect at the time that Chapter 18 was enacted to determine what the legislature intended the term "local government unit" to mean.

Article XI, Section 1 of the 1972 Montana Constitution defines the term "local government units" as follows:

The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Similarly, the legislature has defined "unit of local government" as counties and incorporated cities and towns in the statutes establishing local government study commissions. See section 16-5102(2). In Title 47A, which is entitled "Local Government Code," local governments are assumed to be "cities, towns, counties, and consolidated governments." Consolidated governments, the establishment of which are provided for in Chapter 34 of Title 11, are municipal corporations which govern all the area within a former county in place of the former city, town, and county governments. Assuming that the legislature was aware of the aforementioned statutes which were in effect at the time of passage of Chapter 18 of Title 50, I have reached certain conclusions concerning the meaning of the term "local governmental units" within that chapter.

First, everywhere that the term appears it includes counties and incorporated cities and towns. I have therefore concluded that the term as used in Chapter 18 of Title 50 includes those units.

Second, for the purposes of Chapter 18 of Title 50, the term "local government units" includes school districts because these districts are specifically included in section 50-1807, which sets out the governmental units which may be designated to receive at least 59% of the year's earmarked revenue funds.

Third, "local governmental units" includes consolidated governments established pursuant to Chapter 34 of Title 11. Were I to hold otherwise, areas governed by consolidated governments would be unable to benefit from Chapter 18 of Title 50, except through their school districts.

Because of the aforementioned statutes, I have concluded that these are the only units which meet the definition of "local governmental units" as set forth in Chapter 18 of Title 50.

There has been a question as to whether an Indian tribe fits within the definition of "local government unit". Here I must take note of the fact that in all the statutes in which the term "local government unit" is used reference is to the creation, control, alteration or termination of those units by the state of Montana on its citizens. Clearly then, a "local government unit" is a creation of the Constitution or the statutes of the state of Montana and is controlled by the state of Montana or its citizens.

The courts have held that Indian tribes, on the other hand, have a semi-autonomous status. Many tribes are federal corporations over which the state has no authority to create, alter, control or terminate. I therefore have concluded that Indian tribes are not "local government units" within the meaning of the term in Chapter 18 of Title 50.

**THEREFORE, IT IS MY OPINION:**

Only counties, incorporated cities and towns, consolidated governments created pursuant to Chapter 34 of Title 11, R.C.M. 1947,

and school districts are "local government units" which qualify for assistance under Chapter 18 of Title 50.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General