

VOLUME NO. 37

OPINION NO. 22

COAL BOARD - Local governmental units eligible for coal impact grants under chapter 18 of Title 50, R.C.M. 1947; CITIES AND TOWNS - Eligibility for coal impact grants under chapter 18 of Title 50, R.C.M. 1947, to pay for expenses and improvements of Special Improvement Districts; COUNTIES - Eligibility for coal impact grants under chapter 18 of Title 50, R.C.M. 1947, to pay for expenses and improvements of Rural Improvement Districts; RURAL IMPROVEMENT DISTRICTS - Eligibility for coal impact grants under chapter 18 of Title 50, R.C.M. 1947; UNITS OF LOCAL GOVERNMENT - Defined, as used in chapter 18 of Title 50, R.C.M. 1947; WATER AND SEWER DISTRICTS - Eligibility for coal impact grants under chapter 18 of Title 50, R.C.M. 1947.

- HELD: 1. "Local governmental units" which are eligible to receive impact grants from the Coal Board under chapter 18 of Title 50 include counties, incorporated cities and towns, consolidated local governments, school districts, and any other statutorily created government unit or district empowered to exercise delegated, sovereign powers over a defined geographical region of the state. 36 OP. ATT'Y GEN. NO. 74 is hereby overruled except that portion of the opinion which concerns Indian tribes.
2. County Water and Sewer Districts organized under chapter 45 of Title 16, R.C.M. 1947, are "units of local government" which qualify for assistance under chapter 18 of Title 50, R.C.M. 1947.
3. Rural Improvement Districts organized under chapter 22 of Title 16, R.C.M. 1947, which include areas of more than one county and have separate governing bodies, are "units of local government" which qualify for assistance under chapter 18 of Title 50, R.C.M. 1947.

4. Counties may apply for and receive Coal Board assistance grants to pay for improvements and expenses of Rural Improvement Districts created pursuant to chapter 16, R.C.M. 1947.
5. Cities, towns and consolidated units of local government may apply for and receive Coal Board assistance grants to pay for improvements and expenses of Special Improvement Districts created pursuant to chapter 22 of Title 11, R.C.M. 1947.

11 May 1977

B. J. "Swede" Goodheart
State of Montana Coal Board
Montana Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Goodheart:

You have requested my opinion concerning the authority of the Coal Board to award local impact grants to certain units of local government. The terms of your original opinion request were limited to the authority of the Coal Board to make grants to cities, towns and counties to pay for improvements made by Special Improvement Districts and Rural Special Improvement Districts. Subsequent to your request, I received a similar opinion request from the Custer County Attorney's Office concerning the authority of the Coal Board to award local impact grants to the Custer County Water and Sewer District or to Custer County for the use of the Water and Sewer District. The Coal Board has agreed to combine its own request with that of Custer County. I have stated your questions as follows:

1. May the Coal Board, pursuant to sections 50-1806(4) and 50-1809, R.C.M. 1947, make local impact grants to a County Water and Sewer District organized under chapter 45 of Title 16, R.C.M. 1947, to pay for expenses or improvements of the District?
2. May the Coal Board, pursuant to sections 50-1806(4) and 50-1809, R.C.M. 1947, make local impact grants to cities and towns to pay for expenses or improvements of Special Improvement Districts created under chapter 22 of Title 11, R.C.M. 1947?

3. May the Coal Board, pursuant to sections 50-1806(4) and 50-1809, R.C.M. 1947, make local impact grants to Rural Improvement Districts created under chapter 16 of Title 16, R.C.M., 1947? In the alternative, may the Coal Board make grants to counties to pay for expenses or improvements of Rural Improvement Districts?

The Coal Board was created in 1975 by chapter 18 of Title 50, R.C.M. 1947, specifically section 50-1804, R.C.M. 1947. It has responsibility for awarding grants of financial assistance to those local governmental units which have to expand the provision of public services as the result of large scale coal development. Sections 50-1806(4), 50-1807 and 50-1809, R.C.M. 1947. Grants are made from the earmarked revenue fund established under sections 50-1802 and 84-1319, R.C.M. 1947.

Your questions apparently arise as the result of a prior Attorney General's Opinion found in 36 OP. ATT'Y GEN. NO. 74. That opinion defines "local governmental units" which qualify for assistance under chapter 18 of Title 50 as limited to "incorporated cities and towns, consolidated governments created pursuant to chapter 34 of Title 11, R.C.M. 1947, and school districts". It is my understanding that since the issuance of that opinion, several cities, towns and counties have applied for grants which, if made, would be used to pay for expenses and improvements of Improvement Districts and County Water and Sewer Districts. Under the definition adopted in Opinion No. 74, cited above, Improvement Districts and County Water and Sewer Districts are not eligible, in their own right, to receive Coal Board assistance.

In reviewing Opinion No. 74, I find it difficult to reconcile the restrictive definition given "local governmental units" with the language of chapter 18 of Title 50. Both sections 50-1801 and 50-1806(4), R.C.M. 1947, use the words "local governmental units." Sections 50-1807 and 50-1809, R.C.M. 1947, are more elaborate. Section 50-1807 refers to "counties, towns, school districts and other governmental units." Section 50-1809, R.C.M. 1947, provides in relevant part:

The governing body of a city, town, county, or school district or any other local or state governmental unit or agency may apply for a grant to enable it to provide governmental services which are needed as a direct consequence of coal development. The coal board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved. The board may commit itself to the expenditure of funds for more than one (1) year for a single project, as long as the grant does not extend over more than ten (10) years and does not exceed reasonable revenue expectations. * * * (Emphasis added.)

Although Opinion No. 74 includes consolidated governments within the definition of local government units, consolidated governments are statutorily created municipal corporations, section 11-3401, R.C.M. 1947. Therefore, Opinion No. 74 in effect declares the words "any other local *** governmental unit" as surplusage.

We cannot assume that the Legislature, in employing the words "any other local *** governmental unit", intended the language to be meaningless. See Maxims of Jurisprudence, section 49-133, R.C.M. 1947, and also Townsend v. Davidson, Inc., 166 Mont. 104, 109, 531 P.2d 370 (1970). The words should be given substantive meaning.

The constitutional and statutory provisions cited in Opinion No. 74 do not support the conclusion it reaches. That opinion refers in the first instance to Article XI, section I of the 1972 Montana Constitution, which defines the term "local government." That constitutional provision expressly states that the term "local government units" is not limited to counties and incorporated cities and towns; further, the provision authorizes creation of "other local government units." The cited statutes are similarly inapposite. Reference is made to chapter 51 of Title 16 and to Title 47A, R.C.M. 1947, which established local government study commissions and alternative forms of local government. Those sections are cited as providing the background law against which chapter 18 of Title 50 was enacted: The inference of the opinion is that since chapter 18 of Title 50 provides no definition of "local governmental unit" the Legislature intended to adopt the definition of that term as used in existing law on the same subject. While the basic legal proposition of the argument may be sound, it is

incorrectly applied. Neither Title 47A nor chapter 51 of Title 16 deal with the same subject matter as chapter 18 of Title 50. Both provisions concern establishment of local government study commissions and alternative forms of local governments for cities, towns and counties. The definition of local government in section 16-5102(2) is limited to cities, towns and counties simply because those were the units of general local government for which the Legislature established alternative organizational forms. The establishment or existence of other units of local government was not precluded.

In its general sense, the term "local governmental unit" is used to distinguish governmental units of limited regional jurisdiction from state agencies which administer on a state-wide basis. Typical characteristics of any local governmental unit are the delegation of limited powers over a specific, geographically defined region of the state and accountability to a local electorate or other unit of local government. Montana makes provision for numerous local governmental units in addition to counties, school districts, incorporated cities and towns, and consolidated city and county governments. Examples of such units are Conservation Districts, County Water and Sewer Districts, Public Hospital Districts and Urban Transportation Districts. Conservation Districts are authorized by chapter I of Title 76, R.C.M. 1947, and are expressly defined as governmental subdivisions of the state, section 76-103, R.C.M. 1947. County Water and Sewer Districts are authorized by chapter 45 of Title 16, R.C.M. 1947; they have independent, directly elected governing boards which are empowered to incur indebtedness and fix water, sewer and other rates, sections 16-4506, 16-4517, and 16-4526, R.C.M. 1947. Public Hospital Districts are authorized by chapter 45 of Title 16, R.C.M. 1947, and have independent, directly elected governing boards, section 16-4307, R.C.M. 1947, with broad governmental powers, including powers to levy taxes, borrow money and issue bonds, sections 16-4308 and 16-4309, R.C.M. 1947. Urban transportation districts are authorized by chapter 45 of Title 11, R.C.M. 1947, and have independent governing boards whose members are appointed by participating counties, cities and towns, section 11-4506, R.C.M. 1947, and which are empowered to levy taxes and issue bonds, section 11-4508 and 11-4510, R.C.M. 1947. The foregoing list is not intended to be exhaustive, but only an example. The statutory provisions for these and other units of local government refute the position in Opinion No. 74 that existing law defines the term governmental unit as including

only counties, incorporated cities, towns and consolidated governments and school districts.

This opinion overrules that portion of 36 OP. ATT'Y GEN. NO. 74, which narrowly construes the term "local governmental units," as used in chapter 18 of Title 50, R.C.M. 1947. It is my opinion that the term "local governmental units" includes those governmental units, districts and public bodies which are statutorily created and provided with governing bodies empowered to exercise delegated, sovereign powers over defined geographical regions of the state.

Under this broader definition, a County Water and Sewer District is qualified to receive assistance and may apply directly to the board for an assistance grant.

I have not considered and do not hereby overrule that portion of Opinion No. 74 dealing with the status of Indian tribes.

Special Improvement Districts and Rural Improvement Districts do not fit neatly within even the broadened definition of "local governmental unit." Rural Improvement Districts are authorized by chapter 16 of Title 16, R.C.M. 1947. They are created by action of county boards of commissioners, section 16-1604, R.C.M. 1947. Established districts which include areas lying in more than one county are governed by separate boards of trustees, appointed by joint action of the boards of commissioners of the affected counties. Sections 16-1605.1 and 16-1605.2, 16-1605.3 and 16-1605.4, R.C.M. 1947. A district which includes areas within only one county is governed by the county board of commissioners, which exercises all powers of the district. See section 16-1605.4 and 16-1607 et seq., R.C.M. 1947. Special Improvement Districts are authorized under the provisions of chapter 22 of Title 11, R.C.M. 1947. Districts are created by city councils, which exercise all district powers. Sections 11-2201, 11-2214.4, 11-2216, 11-2217, 11-2245, 11-2258 and 11-2286, R.C.M. 1947. There is no provision for separate and independent governing bodies for Special Improvement Districts.

Rural Improvement Districts which include areas of more than one county, and therefore have governing bodies which are separate and distinct from boards of county commissioners, are "units of local government." They are eligible for Coal Board assistance grants.

In cases of improvement districts operating subjacently to boards of county commissioners and city councils, the definitional solution is more obscure since such districts have no independent governing body. However, it is unnecessary for purposes of this opinion to determine whether such improvement districts are "units of local government." If improvement districts are units of local government then they are eligible for assistance grants; if not, they are merely divisions or branches of county or city or town government, which, in turn, are units of local government eligible for Coal Board assistance. Therefore, the governing bodies of cities, towns and counties may apply for and receive Coal Board assistance grants to pay for improvements and expenses of improvement districts.

In reaching this conclusion, I have considered statutes which require that certain improvements made by improvement districts must be financed by special assessments levied upon benefited property. E.g., sections 11-2214 and 16-1611, R.C.M. 1947. The question has arisen whether this mandated method of financing prevents cities, towns and counties from using Coal Board grants to pay for improvements and expenses of Improvement Districts. The rationale and purpose of special assessment financing is that property most directly benefited by improvements should pay for the benefit rather than the taxpayers of the city, town or county. Crutchfield v. Nash, 84 Mont. 556, 563-564, 276 P. 938 (1929); Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 955 (1957). Thus, cities, towns and counties cannot use local, general tax funds to finance special improvements. See Sharard v. City of Missoula, 49 Mont. 269, 276, 141 P. 544 (1914). However, the special assessment method of financing is not constitutionally required, nor does the Constitution prohibit legislation providing for other methods of payment. Special assessments were adopted merely as a matter of legislative expediency. Crutchfield v. Nash, *supra*, 84 Mont. at 362. The rationale for utilizing special assessments to finance improvements does not apply where gifts, grants, or private funds are provided to finance improvements. Gifts and grants do not additionally burden local taxpayers. Special assessment requirements are inapplicable where improvements are paid for by private persons or companies or grants or gifts. Cf., Marlin v. Brackman, 130 Mont. 228, 232-236, 299 P.2d 761 (1956). In Marlin, the Montana Supreme Court held that a city may create a special improvement district for maintenance of an electric lighting system even though the cost of erecting the electrical system was borne by a private corporation.

Cases in other jurisdictions have similarly held that statutory provisions mandating the special assessment method of financing are not violated by financing, in whole or part, through the use of donations and gifts. E.g., Hearne v. City of Catlettsburg, 40 S.W.2d 923, 295, (Kentucky Court of Appeals, 1937); State v. Orange, 54 N.J.L. 111, 22 A. 1004 (1891). State and federal grants have the equivalent impact as private donations and gifts--they relieve the property owners from the burden of paying for assessments without burdening the general taxpaying population of the city, county or town.

In the case of counties, there is specific authorization to spend State and federal moneys for purposes which may be attached to the grant of such moneys. Section 16-1185, R.C.M. 1947, provides:

The Board of county commissioners of any county in the state of Montana shall have the power and authority to appropriate moneys received from the federal or state government regardless of the time the moneys are received, by formal resolution. The resolution shall state the source of the moneys, the expenditure program for the funds, and the effective date of the appropriation. The expenditure of said funds shall be according to federal requirements specified in the federal act, or state requirements specified in the state legislation. The moneys appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 1, R.C.M. 1947. (Emphasis added.)

There is no corresponding section applicable to cities and towns, but section 11-1004, R.C.M. 1947, authorizes cities and towns to accept gifts, donations and grants, and to use them for the particular purposes attached. The section provides:

Any city or town organized under the laws of the state of Montana is hereby empowered and given the right to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest, or any property, real, personal, or mixed, or any improved or unimproved park or playground, or any water or water right, water

reservoir or watershed, or any timberland or any reserve, or any fish or game reserve in any part of the state, and the right to own, hold, work, and improve the same; and said gifts, donations, grants, bequests, or devises made to any officer or board of any such city or town shall be considered a gift, donation, grant, bequest, or devise made for the use and benefit of any such city or town, and shall be administered and used, by such city or town for the particular purpose for which the same was given, donated, granted, bequeathed, or devised.

If additional support is needed for the conclusion that cities, towns and counties may receive and spend Coal Board grants for their improvement districts, that authority may be found in chapter 18 of Title 50.

Section 50-1806, R.C.M. 1947, empowers the Coal Board to:

(4) award grants, subject to section 50-1807, not to exceed in any one year seven-elevenths (7/11), and after June 30, 1979, three-sevenths (3/7) of the revenue paid into the local impact and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. * * *

Section 50-1809 similarly authorizes applications for grants to enable government units "to provide governmental services." The preamble to the Act uses a similar expression, stating that the purpose of the Act is to "assist local governmental units which have been required to expand the provision of public service." Section 50-1801, R.C.M. 1947 (emphasis added). The terms "governmental services", "government services and facilities", and "public services" are not defined within the Act. They are used interchangeably and are synonymous. I construe these terms to include those services and facilities which are provided by or through a governmental unit in exercise of powers granted such unit by the Legislature. This construction gives the "plain and ordinary" meaning to the terms as commonly understood. State ex rel. Woodahl v. District Court, 162 Mont.

283, 292, 511 P.2d 318 (1973). Any other construction would require artificial and technical distinctions to be made among the various services and facilities provided by local governments. The fact that specific improvements or services provided by government may more directly benefit a particular group or class of persons than the public in general does remove them from the public nature category. Cf. Rutherford v. City of Great Falls, 197 Mont. 512, 516-520, 86 P.2d 656 (1939).

Chapter 18 of Title 50 therefore authorizes assistance grants for public improvements and services which are provided through creation of Improvement Districts. By implication, the Act also empowers cities, towns and counties to expend Coal Board grants for special improvements since a statute grants all powers incidental and necessary to make the general grant effective, Montana State University v. Ransier, 167 Mont. 149, 152, 536 P.2d 187 (1975).

In concluding that the Coal Board is authorized to make grants to Water and Sewer Districts and to cities, towns and counties for the use of their improvement districts, I express no opinion concerning the merits of any application presently before the board. Discretion to select from among applications lies with the board, which may, within the limitations prescribed by sections 50-1806, 50-1807 and 50-1809, R.C.M. 1947, determine priorities among competing applications.

THEREFORE, IT IS MY OPINION:

1. "Local governmental units" which are eligible to receive impact grants from the Coal Board under chapter 18 of Title 50 include counties, incorporated cities and towns, consolidated local governments, school districts, and any other statutorily created government unit or district empowered to exercise delegated, sovereign powers over a defined geographical region of the state. 36 OP. ATT'Y GEN. NO. 74 is hereby overruled except that portion of the opinion which concerns Indian tribes.
2. County Water and Sewer Districts organized under chapter 45 of Title 16, R.C.M. 1947, are "units of local government" which qualify for assistance under chapter 18 of Title 50, R.C.M. 1947.

3. Rural Improvement Districts organized under chapter 22 of Title 16, R.C.M. 1947, which include areas of more than one county and have separate governing bodies, are "units of local government" which qualify for assistance under chapter 18 of Title 50, R.C.M. 1947.
4. Counties may apply for and receive Coal Board assistance grants to pay for improvements and expenses of Rural Improvement Districts created pursuant to chapter 16, R.C.M. 1947.
5. Cities, towns and consolidated units of local government may apply for and receive Coal Board assistance grants to pay for improvements and expenses of Special Improvement Districts created pursuant to chapter 22 of Title 11, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General