

VOLUME NO. 38

OPINION NO. 31

COUNTIES - Sources of funding for district courts;
COURTS, DISTRICT - Six mill levy, definition of "district court costs";
COURTS, DISTRICT - Finance, use of general revenues to supplement six mill levy;
DEPARTMENT OF ADMINISTRATION - Responsibilities for Emergency Assistance grants where funds not appropriated;
MONTANA CODE ANNOTATED - Sections 7-6-2351, 7-6-2352, 7-6-2501, 7-6-2511;
REVISED CODES OF MONTANA, 1947 - Section 16-1015.

- HELD:
1. The term "district court costs" in 1979 Montana Laws, chapter 692, comprises the cost of family court services, public defense services, district court support personnel, and jury and witness fees.
 2. The six mill levy created by 1979 Montana Laws, chapter 692, is not the exclusive funding mechanism for district court programs.
 3. The Department of Administration is not obligated to make emergency grants where no funds are appropriated to the Department for that specific purpose.

7 August 1979

David M. Lewis, Director
Department of Administration
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J. Fred Bourdeau, Esq.
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Dear Sirs:

You have individually requested my opinion regarding the following related questions:

1. What costs and charges are comprised in the term "district court costs" under 1979 Montana Laws, chapter 692?

2. Is the six mill levy provided under chapter 692 the exclusive source of funding for district court operations?
3. Is the Department of Administration obligated to make emergency grants to counties under chapter 692 where the Legislature has appropriated no money for that purpose?
4. May the Department of Administration make emergency grants under a supplemental appropriation approved by the Office of Budget and Program Planning and the Governor?

Section 1 of chapter 692, to be codified at section 7-6-2511, MCA, and 7-6-2351, MCA, authorizes first and second class counties to assess a levy of up to six mills against the taxable property in the county to defray "district court costs." The statute expressly includes "salaries and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court" as "district court costs." Section 2 of chapter 692, to be codified at section 7-6-2352, MCA, allows the Department of Administration (the Department) to make grants to the counties "from funds appropriated to the department for that purpose," to provide "emergency assistance."

Your first question has been framed in the context of whether the following expenses are within the scope of chapter 692: (1) Family court services; (2) public defender programs; (3) personal staff and support personnel for district judges; and (4) jury and witness fees. I conclude that these expenses are "district court costs" within the meaning of the statutes.

Counties are statutorily responsible for a wide variety of costs and expenses relating to district court operations. See 37 Op. Att'y. Gen. No. 37 (1977). These costs and expenses have been a continuing concern to county commissioners and state legislators, since district courts may compel the counties to fund programs and positions necessary to allow the district court to fully exercise its jurisdiction. Board of Commissioners v. Eleventh Judicial District Court, Mont. _____, 36 St. Rptr. 1231 (1979). Chapter 692 authorizes a six mill levy to allow counties to meet these burdens. It is my opinion that costs and charges assessed against a county by virtue of the existence of the district court and the conduct of district court proceedings fall within the term "district court costs" in chapter 692.

Gauged against this standard, the costs and expenses about which you inquire are clearly within the scope of the statute. Support personnel for family court services are a reasonable and necessary aid to the full exercise of the district court's jurisdiction. The Supreme Court so held in the Board of Commissioners case. Likewise, public defense costs, whether incurred through random selection of practicing lawyers to represent indigent defendants or through funding of some sort of public defender's office, are a statutorily and constitutionally mandated cost of criminal litigation in the district court. See State v. Allies, Mont., 36 St. Rptr. 820 (1979). If court clerks and court reporters are treated as "employees of the district court," it cannot seriously be argued that support personnel such as secretaries or law clerks are not similarly situated. Finally, the payment of per diem and expenses for jurors, sections 3-15-201 through 204, MCA (section 25-401, 402, 403, 405, R.C.M. 1947) and witnesses, sections 26-2-501 through 510, MCA (section 25-404, 409 through 413, 218 through 220, R.C.M. 1947) are statutorily mandated costs of the operation of the district court. To the extent these fees are not recoverable from the parties as court costs, section 25-10-201, MCA (section 93-8618, R.C.M. 1947), they are included in the "district court costs" to be funded under chapter 692.

The broad spectrum of functions performed by the offices included by example in chapter 692--"court clerks, court reporters, youth probation officers"--supports the conclusion that the Legislature intended a similarly broad scope for the statute. The covered expenses include the costs associated with the clerk of court, an elected officer, the court reporter, an appointed officer who might technically be described as a "support person," and of youth probation officers, whose social service functions are closely akin to those performed by family court services staff. It is therefore clear that the Legislature intended chapter 692 to provide a funding mechanism for the broad range of expenses which arise from district court operations.

The second question raised by your inquiries is whether the six mill levy provided in chapter 692 is the exclusive vehicle for funding of district court operations, or, put another way, whether the counties may supplement the revenue raised by the six mill levy with appropriations from the revenue raised by the all-purpose levy provided in section 7-6-2501, MCA (section 16-1015, R.C.M. 1947). The Legisla-

ture did not intend chapter 692 to operate as a ceiling or limit on county expenditures for district court operations, but rather intended to provide an additional or supplementary funding source. It is therefore my opinion that the counties may fund their district court operations from revenue raised by the six mill levy supplemented by appropriations from other revenue sources, such as the all-purpose levy provided in section 7-6-2501, MCA.

Chapter 692 is drafted in permissive, rather than mandatory terms. Section (1) (section 7-6-2511, MCA) provides that "the governing body of each county may levy and collect a tax." (Emphasis added.) The statute places no obligation on the counties to fund their district court operations through the six mill levy. The title of Senate Bill 463, enacted as chapter 692, evidences no intent to limit expenditures by making the six mill levy an exclusive funding source. The title discloses that chapter 692 is an act to provide a mill levy and to allow emergency grants to the counties from the state. Any implication of a limitation on spending from the mere provision of a funding source could bring the statute into conflict with the constitutional requirement that the subject of a bill be "clearly expressed in its title," 1972 Mont. Const., art. 5, § 11(3). The decision of the Montana Supreme Court in Board of Railroad Commissioners v. Gamble-Robinson Co., 111 Mont. 441, 448, 111 P.2d 306 (1941), requires that statutes should be construed to avoid such a result. I therefore conclude that the six mill levy is not an exclusive funding source, but rather provides a source which may be supplemented by other revenues.

Your third inquiry relates to section 2 of chapter 692 (section 7-6-2352, MCA), which provides emergency grants to cover expenditures not included in the budget. I have been informed by the Department of Administration that no funds were appropriated by the Legislature to finance such grants. Your question is whether the Department is nevertheless obligated to make grants to counties which qualify. I conclude that it is not. The statute provides as follows:

(1) The department of administration may make grants to the governing body of a county for the district courts for emergency assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose.

* * *

(Emphasis added.)

The statute is clear on its face in providing that the Department may make grants only from funds specifically appropriated for that purpose. If no such funds are provided, the Department is under no obligation to make grants, and in fact would by negative implication be precluded from doing so.

Finally, you inquire whether the Department may make grants from funds provided by a budget amendment approved by the Office of Budget and Program Planning and the Governor but which will not be submitted to the Legislature until 1981. Nothing in the statute would prohibit this practice. However, supplemental appropriations are generally approved by the Governor in emergency situations, where unanticipated occurrences create a shortfall in appropriated funds. As that determination is within the purview of the decisions to be made by the Governor's budget office, I express no opinion as to whether the failure of the Legislature to fund the emergency grant program constitutes an emergency which would move the Governor to approve such a request.

THEREFORE, IT IS MY OPINION:

1. The term "district court costs" in 1979 Montana Laws, chapter 692, comprises the cost of family court services, public defense services, district court support personnel, and jury and witness fees.
2. The six mill levy created by 1972 Montana Laws, chapter 692, is not the exclusive funding mechanism for district court programs.
3. The Department of Administration is not obligated to make emergency grants where no funds are appropriated to the Department for that specific purpose.

Very truly yours,

MIKE GREELY
Attorney General