

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 6

COUNTIES - Federal revenue sharing funds, allocation of water and sewer districts;  
WATER AND SEWER DISTRICTS - Counties, federal revenue sharing funds;  
MONTANA CODE ANNOTATED - Title 7, chapter 13, parts 22, 23;  
MONTANA CONSTITUTION - Article V, section 11(5);  
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 25, 37 Op. Att'y Gen. No. 61, 37 Op. Att'y Gen. No. 105.

HELD: A board of county commissioners does not have authority to allocate federal revenue sharing funds to a water and sewer district.

9 February 1981

Myron Wheeler  
Board of County Commissioners  
Teton County Courthouse  
Choteau, Montana 59422

Dear Mr. Wheeler:

You have requested my opinion on the following question:

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Does the board of county commissioners have the authority to allocate federal revenue sharing funds to a water and sewer district?

A group of rural residents in Teton County has organized to develop a rural water distribution system to provide water to families who presently have to haul their domestic water supplies. These residents propose to create a water district pursuant to Title 7, chapter 13, parts 22 and 23, MCA, and have requested that the county grant the district \$10,000 in federal revenue sharing funds to use for water quality testing and test drilling.

Federal revenue sharing funds may be spent for any purpose for which local governments may spend or pledge general tax revenues under state law. 37 Op. Att'y Gen. No. 61; 37 Op. Att'y Gen. No. 105. A county such as Teton County which has not adopted a self-government form of local government has only the powers that are expressly conferred by statute or that are necessarily implied therefrom. Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1945); State ex rel. Bowler v. County Commissioners, 106 Mont. 251, 257, 76 P.2d 648 (1938).

Article V, section 11(5) of the Montana Constitution prohibits appropriations "for religious, charitable, individual, educational or benevolent purposes" unless made to an organization "under the control of the state." This provision has been applied to subdivisions of the state such as counties. 37 Op. Att'y Gen. Nos. 25 and 105. Section 7-7-2103, MCA, provides:

No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation....

Counties may pay money to individuals or organizations on an exchange basis to provide services or materials that they are authorized by statute to provide to their constituents. 37 Op. Att'y Gen. No. 105. Thus the first difficulty with the instant proposal is that no power can be found or necessarily implied to allow counties to directly provide for rural water distribution systems.

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To the contrary, there are specific mechanisms provided in the statutes to provide for the establishment of these services. One of these mechanisms is the water district provided for by Title 7, chapter 13, parts 22 and 23. See, e.g., § 7-13-2218, MCA. While section 7-13-2221, MCA, empowers the districts to accept funds from "federal, state, and other public or private sources" there is no apparent power anywhere for the county to be in effect a general fund donor to the district. The financing of district operations is specifically provided for (§ 7-13-2301 et seq., MCA), and the county's only specific involvement is the duty to levy an assessment on the land in the district when the district's revenues are insufficient to pay the principal and interest on any district bonded indebtedness, § 7-13-2302, MCA.

Therefore, since the county has no specific or necessarily implied power to make the proposed grant, and since specific means of financing and county involvement are provided for, the conclusion is that the county may not make the proposed grant.

THEREFORE, IT IS MY OPINION:

A board of county commissioners does not have authority to allocate federal revenue sharing funds to a water and sewer district.

Very truly yours,

MIKE GREELY  
Attorney General