

BANKS AND BANKING - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations;

COUNTIES - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and of motor vehicle fees;

COUNTIES - Proper use of poor fund monies;

FEES - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and motor vehicle fees;

MOTOR VEHICLES - Proper mill levy allocation of motor vehicle fees;

PUBLIC FUNDS - Proper use of county poor fund monies;

TAXATION AND REVENUE - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and of motor vehicle fees;

MONTANA CODE ANNOTATED - Sections 7-6-2201, 7-6-2321, 15-13-701(1), 15-16-114(1), 15-31-701, 15-31-702, 15-31-702(1)(b), 15-31-702(2), 53-2-322, 53-2-322(2), 53-2-322(7), 53-2-323(7), 53-2-811, 53-2-813, 53-2-813(1)(b), 61-3-509, 61-3-532, 61-3-536, 61-3-536(6);

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 18 (1983), 40 Op. Att'y Gen. No. 29 (1983), 40 Op. Att'y Gen. No. 73 (1984).

HELD: 1. Corporate license fees received by county treasurers between July 1, 1983, and June 30, 1984, under section 15-31-702, MCA, are properly distributed pursuant to tax levies adopted by the board of county commissioners for fiscal year 1984, including any levy promulgated pursuant to section 53-2-813, MCA.

2. Motor vehicle fees subject to distribution under section 61-3-509, MCA, are properly allocated in the same manner as personal property taxes. Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive under section 53-2-813, MCA, the appropriate proportional share of such monies collected between January 1, 1984, and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983.
3. State aid received pursuant to section 61-3-536, MCA, during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services, properly paid into the state special revenue fund under section 53-2-813, MCA, in such amount as determined by fiscal year 1984 mill levies.
4. Sections 53-2-322 and 53-2-323(7), MCA, govern the proper use of monies in a county's poor fund and must be applied on a case-by-case basis.

30 August 1985

David M. Lewis, Director  
Department of Social and  
Rehabilitation Services  
111 North Sanders  
Helena MT 59620

Dear Mr. Lewis:

You have requested my opinion concerning several questions which I have consolidated and phrased as follows:

1. In counties where the Department of Social and Rehabilitation Services assumed responsibility for public assistance programs and protective services under section 53-2-811, MCA, effective July 1, 1983, must the counties disburse to the state special revenue

fund pursuant to section 53-2-813, MCA, monies received by them between July 1, 1983, and December 31, 1983, under sections 15-31-702 and 61-3-509, MCA, and otherwise allocable to their poor funds?

2. In a county where the Department of Social and Rehabilitation Services assumed responsibility for public assistance programs and protective services under section 53-2-811, MCA, effective July 1, 1983, must the county disburse to the state special revenue fund, pursuant to section 53-2-813, MCA, monies received by it during March 1984 under section 61-3-536, MCA, on the basis of fiscal year 1984 mill levies?
3. If some or all of the monies received pursuant to sections 15-31-702, 61-3-509, and 61-3-536, MCA, during the period between July 1, 1983, and December 31, 1983, and otherwise allocable to the county poor fund were properly not tendered to the state special revenue fund by counties where state assumption of public assistance programs and protective services occurred under section 53-2-811, MCA, effective July 1, 1983, how may such monies be used?

Your questions derive from an audit completed in October 1984 and indicating that 11 counties, whose public assistance programs were assumed by the Department of Social and Rehabilitation Services under section 53-2-811, MCA, on July 1, 1983, had allegedly underpaid revenue due to the state special revenue fund under section 53-2-813, MCA, in the total amount of \$226,230. A subsequent partial payment by one county reduced that amount to \$196,685. The alleged underpayments resulted from (1) nine of the counties failing to tender to the state special revenue fund that proportion of proceeds from monies received under section 15-31-702, MCA, between July 1, 1983, and December 31, 1983, which was, based on fiscal year 1983 levies, attributable to the counties' poor funds; (2) all of the counties failing to tender to the special revenue fund that proportion of monies subject to distribution under section 61-3-509,

MCA, and received between July 1, 1983, and December 31, 1983, which was, based on fiscal year 1983 levies, attributable to the counties' poor funds; and (3) one county failing to tender to the special revenue fund that proportion of monies received under section 61-3-536, MCA, during March 1984, which was, based on fiscal year 1984 tax levies, attributable to the special revenue fund. The counties contend that they were required to make payments to the special revenue fund for monies tendered pursuant to sections 15-31-702 and 61-3-509, MCA, only as to those amounts received on or after January 1, 1984--the date on which their fiscal year 1984 levies were first applied for purposes of determining the proper allocation of monies paid under those sections. The one county's failure to tender to the special revenue fund this appropriate proportion of the March 1984 payment under section 61-3-536, MCA, is unexplained.

In 1983 the Legislature enacted sections 53-2-801 to 822, MCA, which provide for the Department of Social and Rehabilitation Services' assumption of public assistance programs and protective services for children and adults traditionally the responsibility of county departments of public welfare. See 40 Op. Att'y Gen. No. 73 (1984). Any such transfer by a county is voluntary and only upon the adoption of an authorizing resolution or ordinance by the involved board of county commissioners. § 53-2-811, MCA. While counties are permitted to transfer all or part of their public assistance and protective services functions, the 11 counties here opted for the transfer of all such responsibilities, and the transfer became effective at the beginning of fiscal year 1984--July 1, 1983.

Prior to the 1983 legislation, the cost of providing public assistance and protective services was borne by the county poor fund. See § 53-2-322, MCA; 40 Op. Att'y Gen. No. 29 (1983). Monies for the poor fund were derived from various taxing sources, such as bank and savings and loan association corporate license fees received under section 15-31-702, MCA, motor vehicle fees received under section 61-3-509, MCA, and state aid monies received under section 61-3-536, MCA; the precise amount of such monies payable to the poor fund was determined by multiplying the ratio of the poor fund mill levy to the total of all county mill levies within a particular taxing district against the proceeds from

the taxing source. The fiscal year for county budget purposes begins on July 1, and a fiscal year's tax levies are established by a board of county commissioners on the second Monday in August of that fiscal year. §§ 7-6-2201, 7-6-2321, MCA; see 40 Op. Att'y Gen. No. 18 (1983). Under the 1983 legislation any county opting for full state assumption of public assistance programs and protective services as of July 1, 1983, was required to levy 12 mills for payment during fiscal year 1984 to the state special revenue fund, unless, during fiscal year 1982, the county levied less than 12 mills for its poor fund, in which instance it was required to levy the fiscal year 1982 rate "plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility." § 53-2-813(1)(b), MCA. See 40 Op. Att'y Gen. No. 18 (1983). As of fiscal year 1985, however, all counties assigning full responsibility for public assistance programs and protective services to the State were obligated to levy 12 mills for payment to the special revenue fund.

Section 53-2-813(2), MCA, expressly states that the special revenue fund may receive only the proceeds of the mill levy established under subsection (1); by negative implication, therefore, the monies derived from prior fiscal year levies may not be deposited into the fund. Cf. 40 Op. Att'y Gen. No. 18 (payments to the special revenue fund under section 53-2-813, MCA, must include revenue from any source normally allocated among the various county funds). This interpretation makes practical sense because the Legislature, in mandating that certain mill levy rates be set for fiscal year 1984 and beyond in counties opting for state assumption, obviously concluded that those rates were necessary to support the Department of Social and Rehabilitation Services' provision of public assistance programs and protective services and viewed the special revenue fund payment as the quid pro quo for state assumption. The issue, consequently, is whether the counties involved here were required to distribute the disputed taxes received between July 1, 1983, and December 31, 1983, on the basis of the mill levy adopted in August 1983 pursuant to section 53-2-813, MCA, i.e., whether the fiscal year 1984 levies were applicable to monies



distributable under sections 15-31-702, 61-3-509, and 61-3-536, MCA, during the last six months of 1983.

Corporate license fees paid by banks and savings and loan associations are collected by the Department of Revenue under section 15-31-701, MCA. The Department is required, within 30 days of receiving such payments, to transmit 80 percent thereof to the treasurer of the county in which the bank or savings and loan association is located. §§ 15-31-701(1), 15-31-702(1)(b), MCA. The county treasurer must then allocate to each taxing jurisdiction within the county "the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located." § 15-31-702(2), MCA (emphasis added). While section 15-31-702(2), MCA, does not specify what event determines the applicable fiscal year, the most reasonable date is that on which the county treasurer receives the tax payment. This interpretation is consistent with general governmental accounting principles which consider license fee and tax income accrued when actually received. See Municipal Finance Officers Association, Governmental Accounting, Auditing, and Financial Reporting 13 (1980); W. Meigs, Modern Advanced Accounting 522-23 (1975). Consequently, any corporate license taxes from banks or savings and loan associations received on and after July 1, 1983, by the nine county treasurers involved here were subject to fiscal year 1984 mill levies including that required in section 53-2-813, MCA, and were payable, in proper proportion, to the state special revenue fund.

Section 61-3-509, MCA, governs distribution of various motor vehicle fees. In relevant part it provides that such money must be distributed "in the relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as personal property taxes." Section 15-16-114(1), MCA, in turn states:

All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately

distribute the money so collected to the various and proper funds in his charge.

Under section 15-16-114(1), MCA, therefore, proceeds from property taxes are distributed during the calendar year on the basis of tax levies adopted during August of the preceding year. The question becomes whether section 61-3-509, MCA, merely requires fees collected under the taxes described therein to be distributed proportionately like personal property taxes or whether the same percentages must be utilized as in personal property tax disbursements. If the latter interpretation is accepted, the mill levies adopted in August 1983 for fiscal year 1984 would not be applied to the motor vehicle fees distributed under section 61-3-509, MCA, until January 1984, and only then would the state special revenue fund be entitled to receipt of its proportionate share of those fees under section 53-2-813, MCA.

I conclude that the most reasonable interpretation of section 61-3-509, MCA, requires county treasurers to distribute the described fees in the same percentages as property taxes. First, prior to the enactment of section 61-3-532, MCA, light vehicles, which are the principal source of the funds covered by section 61-3-509, MCA, were taxed as personal property, and pertinent legislative history reflects an intention not to modify the method of distributing the fees collected under the new statute. See April 9, 1981, Minutes of House Committee on Taxation (SB 355). Second, had the Legislature intended only that the license fees be allocated proportionately, it need not have specifically mandated distribution in the same manner as personal property taxes. In sum, section 61-3-509, MCA, requires the fees subject to its provisions be treated, for distribution purposes, identically to personal property taxes.

Section 61-3-536(6), MCA, states that monies received by counties under that section must be distributed "in the same manner as funds are distributed to the taxing jurisdictions as provided in section 61-3-509." In view of my interpretation of section 61-3-509, MCA, I conclude that allocation of such monies must be on a calendar-year basis and predicated upon those levies made during August of the previous year. Consequently, any payments received by counties during 1984 under

section 61-3-536, MCA, must be distributed in proper proportion to the special revenue fund on the basis of fiscal year 1984 mill levies.

Permissible uses of county poor fund monies are governed by sections 53-2-322 and 53-2-323(7), MCA. Section 53-2-322(2), MCA, requires boards of county commissioners to

budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

Section 53-2-322(7), MCA, thereafter imposes the specific limitations on the use of such monies:

No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund.... Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the



department of social and rehabilitation services.

Section 53-2-323(7), MCA, further requires, as to any county which received an emergency grant-in-aid, that "[a]t the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year." Although section 53-2-323(7), MCA, refers to amounts in the poor fund as of the close of the fiscal year, those amounts also include other monies, such as those received under section 61-3-509, MCA, received after the fiscal year's end but nonetheless placed into the poor fund on the basis of such fiscal year's mill levy. Thus, if the various requirements of section 53-2-322(7), MCA, conditioning use of poor fund monies other than for public assistance and protective services purposes are satisfied and the payments required by section 53-2-323(7), MCA, have been made, any remaining poor fund monies may be utilized to erect or improve any county building directly concerned with care of the poor, except improvements to a county hospital or nursing home. See 40 Op. Att'y Gen. No. 29.

THEREFORE, IT IS MY OPINION:

1. Corporate license fees received by county treasurers between July 1, 1983, and June 30, 1984, under section 15-31-702, MCA, are properly distributed pursuant to tax levies adopted by the board of county commissioners for fiscal year 1984, including any levy promulgated pursuant to section 53-2-813, MCA.
2. Motor vehicle fees subject to distribution under section 61-3-509, MCA, are properly allocated in the same manner as personal property taxes. Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive under section 53-2-813, MCA, the appropriate proportional share of such monies collected between January 1, 1984, and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983.

3. State aid received pursuant to section 61-3-536, MCA, during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services, properly paid into the state special revenue fund under section 53-2-813, MCA, in such amount as determined by fiscal year 1984 mill levies.
4. Sections 53-2-322 and 53-2-323(7), MCA, govern the proper use of monies in a county's poor fund and must be applied on a case-by-case basis.

Very truly yours,

MIKE GREELY  
Attorney General