VOLUME NO. 42 OPINION NO. 113

COUNTIES - Requirement to assess maximum poor fund mill levy to become eligible for state grant-in-aid to pay for indigent felon's medical expenses;
COUNTY COMMISSIONERS - Requirement of either a judgment against the county or passage of resolution by county commissioners and election to increase county poor fund mill levy over 1986 levels;
COUNTY GOVERNMENT - Requirement of either a judgment against the county or passage of resolution by county commissioners and election to increase county poor fund mill levy over 1986 levels;
PUBLIC ASSISTANCE - Requirement that counties assess maximum poor fund mill levy to become eligible for state

grant-in-aid to pay for indigent felon's medical expenses;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Requirement that counties assess maximum poor fund mill levy to become eligible for state grant-in-aid to pay for indigent felon's medical expenses;
TAXATION AND REVENUE - Requirement to reduce county liability to judgment or hold election to increase county poor fund mill levy over 1986 levels, in light of I-105;
MONTANA CODE ANNOTATED - Sections 7-6-2344, 15-10-401, 15-10-402, 15-10-412, 53-2-321 to 53-2-323;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987), 39 Op. Att'y Gen. No. 20 (1981).

HELD: 1. Before a county that has exhausted its poor fund due to liability for an indigent felon's medical expenses becomes eligible for an emergency grant-in-aid under section 53-2-323, MCA, it must first assess the maximum poor fund levy of 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA. In light of the adoption of Initiative No. 105, this may be done pursuant to either section 15-10-412(8)(f) or section 15-10-412(9), MCA.

2. In light of Initiative No. 105, increasing a county poor fund levy over 1986 levels to pay for an indigent felon's medical expenses requires either that a liability against the county be reduced to a judgment, or that the county commissioners pass a resolution pursuant to section 15-10-412(9), MCA, followed by either a special or general election in which the issue of increased property tax liability is presented to the voters for authorization.

28 September 1988

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the effect of Initiative No. 105 on a county's request for an emergency state grant-in-aid, and I have rephrased your questions as follows:

1. In light of sections 15-10-401 and 15-10-402, MCA (Initiative No. 105, 1986), must a county that has exhausted its poor fund due to an indigent's medical expenses have levied the maximum 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA, in order to qualify for an emergency grant-in-aid pursuant to section 53-2-323, MCA?

2. If a county must first levy the maximum 13.5 mills as authorized in sections 53-2-321 and 53-2-322, MCA, before it can qualify for an emergency grant-in-aid, what procedure should be used to impose additional levies, in light of sections 15-10-401 and 15-10-402, MCA (Initiative No. 105, 1986)?

I understand from your letter that a resident indigent convicted in Teton County of felony assault incurred extensive medical costs stemming from the assault, and those costs will exhaust the Teton County poor fund, leaving a balance of about $26,000 in unpaid medical bills. In addition, it is my understanding that Teton County has levied 3.3 mills for the Teton County poor fund every year since 1986. Finally, you have stated that Teton County has neither self-government powers nor a state-assumed welfare service.

It is clear that Teton County is responsible for the indigent's medical bills. Montana Deaconess Medical Center v. Johnson, No. 88-91 (Mont. July 7, 1988).

Section 53-2-323, MCA, provides in pertinent part that:

> [A] county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:
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> (1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:
>
> ....

> (b) that all lawful sources of revenue and other income to the county poor fund will be exhausted[.] [Emphasis added.]

Section 53-2-321, MCA, authorizes a county to levy a property tax not to exceed 13.5 mills for the purpose of caring for the indigent sick of the county, and section 53-2-322, MCA, requires that "[t]he board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary."

In 39 Op. Att'y Gen. No. 20 (1981) at 77, I construed the language of the statutes quoted above as requiring a county to have exhausted the entire 13.5 mill levy authorized by section 53-2-321, MCA, before that county could become eligible for an emergency grant under section 53-2-323, MCA. That conclusion was based upon a careful review of the legislative history of section 53-2-323, MCA. See 39 Op. Att'y Gen. No. 20 at 80-81. Although the issue in that opinion involved counties with self-government powers, the holding has application to counties with general government powers as well:

> Section 53-2-321, MCA, specifically authorizes the counties "to levy and collect annually a tax on property not exceeding 13½ mills...." [Emphasis in original.] This is the only mill levy authorized for public assistance. Thus, referring to county mill levies, as opposed to other unrelated sources of revenue, once a county has levied and collected 13½ mills for purposes of the county poor fund it has exhausted "all lawful sources of revenue" and thus met the requirement of section 53-2-323(1)(b), MCA.
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> ....
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> [T]he Legislature specifically limited the scope of the application for a grant-in-aid to whether the county had levied and collected the "whole of the 13.5 mill levy" ....
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> ....
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> The reference in chapter 37 to the specific mill levy limit authorized now in section 53-2-321, MCA, read together with language requiring exhaustion of all sources of revenue makes it clear that in reviewing an application to the department for a state

> grant-in-aid, the Legislature intended that the review be limited to the mill levy authorized in section 53-2-321, MCA.
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> ....
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> While counties with self-government powers are not subject to statutory mill levy limits it does not necessarily follow that such counties must levy more than 13.5 mills to be eligible for a grant-in-aid. All that is required is that the county exhaust "the whole of the 13.5 mill levy" authorized in section 53-2-321, MCA. [Emphasis added.]

39 Op. Att'y Gen. No. 20 at 79-81.

In 1981 the Legislature amended section 53-2-323, MCA, by providing the Department of Social and Rehabilitation Services with authority to establish criteria for evaluating the reasonableness and necessity of county poor fund expenditures when reviewing an application for an emergency grant-in-aid. 1981 Mont. Laws, ch. 400 (HB 291). The holding cited above in 39 Op. Att'y Gen. No. 20 (1981) was affirmed by the Statement of Intent issued in conjunction with HB 291, which announced that "[g]rants-in-aid are mandatory if the county is spending over the 13.5 poor fund mill levy and if the present law is followed." Minutes of House Committee on State Administration, February 10, 1981.

However, because the passage of Initiative No. 105 (I-105) in 1986, codified in sections 15-10-401 and 15-10-402, MCA, limited imposition of property taxes to amounts levied in 1986, the question remains whether Teton County has exhausted all "lawful sources of revenue" in accord with section 53-2-323, MCA, by limiting its county poor fund levy to 1986 levels, i.e., 3.3 mills. In other words, is there any lawful avenue for Teton County to levy the maximum of 13.5 mills authorized by section 53-2-321, MCA, in light of sections 15-10-401 and 15-10-402, MCA?

I conclude that section 15-10-412, MCA, provides such an avenue. Subsection (8)(f) sets forth a specific exception to the limitations imposed by sections 15-10-401 and 15-10-402, MCA, as follows:

> (8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

> ....
>
> (f) satisfaction of judgments against a taxing unit[.]

Thus the county may levy the maximum 13.5 mill levy despite sections 15-10-401 and 15-10-402, MCA, if its obligation to repay the indigent's medical expenses is reduced to a judgment.

Teton County also has the option of passing a resolution and conducting an election to determine whether the voters of the county would authorize the increase in tax liability necessary in levying the maximum 13.5 mills for the county poor fund, pursuant to section 15-10-412(9), MCA.

In your second question, you ask what procedure should be used to increase Teton County's poor fund mill levy from its 1986 level of 3.3 mills to 13.5 mills.

In the absence of a judgment against the county for the amount of medical expenses due (see § 15-10-412(8)(f), MCA), such a process would first require the county commissioners to adopt a resolution which satisfies the requirements of section 15-10-412(9), MCA. That resolution must include, inter alia, a finding that there are no other alternative sources of revenue, and a summary of the alternatives considered by the commissioners. § 15-10-412(9)(e), (f), MCA. In passing such a resolution, it should be made clear that in the wake of I-105, local governments may be required to reduce discretionary spending in order to perform legally mandated duties. See 42 Op. Att'y Gen. No. 21 (1987).

Following adoption of the resolution, "the voters in the taxing unit" must approve the proposed tax increase. Although there is no specific direction in section 53-10-412(9), MCA, regarding the process to be used in securing voter approval, guidance is provided by sections 7-6-2341 to 2345, MCA. Until the approval of I-105 in 1986, those statutes were among the exclusive provisions addressing emergency expenditures by the county commissioners. Under section 7-6-2344, MCA, when emergency expenditures by a county exceed certain statutory levels, any further emergency spending must be "authorized by a majority of the electors of the county, voting at a general or special election." Unless one of the exceptions enumerated in section 15-10-412(8), MCA, applies, however, section 15-10-412(9), MCA, requires an election for any increase in property tax liability over 1986 levels.

Thus, under section 15-10-412(9), MCA, Teton County voters must have an opportunity to authorize any increase in the poor fund tax levy in either a general or special election, conducted in accord with the provisions of Title 13, MCA. In addition, section 15-10-412(9), MCA, suggests that the ballot contain specific language indicating that granting authorization to raise the poor fund mill levy will increase the tax liability of property owners in the county.

THEREFORE, IT IS MY OPINION:

1. Before a county that has exhausted its poor fund due to liability for an indigent felon's medical expenses becomes eligible for an emergency grant-in-aid under section 53-2-323, MCA, it must first assess the maximum poor fund levy of 13.5 mills authorized by sections 53-2-321 and 53-2-322(1), MCA. In light of the adoption of Initiative No. 105, this may be done pursuant to either section 15-10-412(8)(f) or section 15-10-412(9), MCA.

2. In light of Initiative No. 105, increasing a county poor fund levy over 1986 levels to pay for an indigent felon's medical expenses requires either that a liability against the county be reduced to a judgment, or that the county commissioners pass a resolution pursuant to section 15-10-412(9), MCA, followed by either a special or general election in which the issue of increased property tax liability is presented to the voters for authorization.

Very truly yours,

MIKE GREELY
Attorney General