

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 129

CITIES AND TOWNS - Authority to adopt budget which provides for different millage rates within a particular taxing unit;

TAXATION AND REVENUE - Authority of city council to adopt budget which provides for different millage rates within a particular taxing unit;

MONTANA CODE ANNOTATED - Sections 15-10-401, 15-10-402, 15-10-412;

MONTANA LAWS OF 1987 - Chapter 654;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987).

HELD: Chapter 654, 1987 Montana Laws, prohibits use of different millage rates within a taxing unit to increase the tax liability attendant to a particular piece of property over the 1986 tax year level or to impose tax liability equal to that in the 1986 tax year as to property whose valuation has decreased.

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29 December 1988

David V. Gliko
City Attorney
P.O. Box 5021
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Ken Nordtvedt, Director
Department of Revenue
Room 455, Mitchell Building
Helena MT 59620

Dear Messrs. Gliko and Nordtvedt:

You have submitted separate opinion requests which present the following question:

Is a taxing unit prohibited from adopting a mill levy rate which cannot be uniformly imposed upon all property within the unit because of the tax limitation in section 15-10-412(7), MCA?

I conclude that chapter 654, 1987 Montana Laws (codified in §§ 15-10-411, 15-10-412, MCA), prohibits a taxing unit from using nonuniform, or varying, millage rates in a particular tax year either to increase a taxpayer's liability over 1986 for property whose taxable valuation has increased pursuant to section 15-10-412(4), MCA, or to impose tax liability equal to that in 1986 for property whose valuation has decreased.

In August 1988 the city of Great Falls adopted Resolution No. 8203 which established an aggregate levy of 103.37 mills for all taxing units included within its fiscal year 1989 budget, excluding a 1.12 mill levy to finance bonded indebtedness. The 103.37 mill levy was 8.30 mills higher than that imposed for tax year 1986--the base year for determining compliance with the property tax limitations in Initiative No. 105 (codified in §§ 15-10-401, 15-10-402, MCA) and chapter 654. The total taxable valuation in none of the involved taxing units had decreased by 5 percent or more from the previous year, and the higher mill levy thus could not be applied to all property within a particular taxing unit since, if so applied, the tax liability of some taxpayers would increase over tax year 1986 in contravention of section 15-10-412(7), MCA. Nonetheless, the resolution contemplated full application to certain valuation which, under chapter 654, is excluded from the general property tax limitation and thus anticipated that some property

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valuation would be effectively taxed at 95.07 mills and other property valuation taxed at 103.37 mills. It further contemplated that property whose valuation had decreased from 1986 levels would be taxed at the millage rate, not to exceed 103.37 mills, necessary to produce the same monetary liability as in 1986 for the involved property. Prior to actual implementation of the higher mill levy, the city council passed Resolution No. 8216 which restored the 1986 levy of 95.07 mills, but the council remains interested in the validity of the earlier resolution for future budgetary purposes.

I first address Resolution No. 8203's validity with respect to application of the 103.37 mill levy rate to additional valuation of the kind specified in section 15-10-412(4), MCA. Initiative No. 105 limited, with certain exceptions not relevant here, the maximum amount of taxes which could be levied on property in statutory classes 3, 4, 6, 9, 12, and 14 to that levied in tax year 1986. § 15-10-402(1), MCA. It defined the terms "amount of taxes levied" and "amount levied" to "mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding ... changes in the number of mills levied, or increase or decrease in the value of a mill." § 15-10-402(4), MCA. Chapter 654, whose provisions terminate on December 31, 1989, modified the initiative's effect in various respects but generally limits property taxes to 1986 levels in section 15-10-412(7), MCA. Like that in Initiative No. 105, chapter 654's property tax limitation was established with reference to actual taxes paid under 1986 assessments and not to mill levy rates. § 15-10-412(2) and (7), MCA. Chapter 654 accordingly does not nominally restrict mill levy rates although, by limiting tax amounts, it may, and virtually always does, affect in practice permissive millage rates. See 42 Op. Att'y Gen. No. 21 (1987).

Unlike Initiative No. 105, chapter 654 does allow increases

in the actual tax liability on individual property in each [statutory] class as a result of:

- (a) construction, expansion, replacement, or remodeling of improvements that adds value to the property;
- (b) transfer of property into a taxing unit;
- (c) reclassification of property;

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(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

§ 15-10-412(4), MCA. The bases for these exemptions are either an increase in the property's valuation, other than from cyclical reappraisal, or a change in the legal status of the property accompanied by differing tax consequences. Section 15-10-412(4), MCA, clearly does not create an exception to the general property tax limitation in section 15-10-412(7), MCA, for tax amounts which do not result from new or increased taxable valuation or change in legal status.

Consequently, while chapter 654 does not specifically restrict mill levy rates for property subject to the tax limitation in section 15-10-412(7), MCA, it does prohibit any increase in actual tax liability over 1986 tax year levels unless otherwise authorized. The exceptions to this limitation in section 15-10-412(4), MCA, must be construed in light of this prohibition and, when so read, do not permit increases over 1986 tax amounts premised on differentiated millage rates within a taxing unit. Increases over 1986 tax levels authorized under section 15-10-412(4), MCA, may instead derive only from the additional valuation or change in a property's legal status of the nature described in that subsection. My conclusion in this regard is further supported by the analysis below with respect to the effect of the last sentence of section 15-10-412(7), MCA.

Chapter 654 also prohibits application of Resolution No. 8203 insofar as it would have imposed differing millage rates, not to exceed 103.37 mills, on property whose valuation decreased since 1986 in order to reach that year's level of tax liability for the particular property. The final two sentences of section 15-10-412(7), MCA, read:

In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing

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unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the previous tax year. If a taxing unit's taxable valuation decreases by 5% or more from the previous tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

The first sentence reflects the basic property tax restriction embodied in Initiative No. 105, while the second allows additional mills to be imposed to compensate for overall property devaluation of 5 percent or more from one year to the next within a taxing unit without reference to that restriction--as long as total property tax revenue for the taxing unit does not exceed the 1986 amount. The second sentence expressly authorizes levies of additional mills because the Legislature recognized that, except in the extraordinary situation where all property within a taxing unit has decreased in valuation, application of increased millage will raise at least some taxpayers' tax liability over 1986 amounts. This sentence, moreover, would have no discernible purpose if nonuniform millage rates were permissible, since in that case a taxing unit could always levy at whatever rates would produce total property tax liability at least equal to that in 1986. Because it presumably does not enact meaningless provisions, I draw from the last sentence of section 15-10-412(7), MCA, the conclusion that the Legislature intended property taxes subject to Initiative No. 105 and chapter 654 to be levied on the basis of a uniform millage rate within a particular taxing unit--a conclusion inconsistent with Resolution No. 8203.

I note that determination of your question on statutory grounds avoids the need to address a significant issue under the United States and Montana Constitutions' equal protection provisions presented by Resolution No. 8203's proposed use of varying millage rates.

THEREFORE, IT IS MY OPINION:

Chapter 654, 1987 Montana Laws, prohibits use of different millage rates within a taxing unit to increase the tax liability attendant to a particular piece of property over the 1986 tax year level or to impose tax liability equal to that in the 1986 tax year as to property whose valuation has decreased.

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Very truly yours,

MIKE GREELY
Attorney General