

VOLUME NO. 43

OPINION NO. 57

CITIES AND TOWNS - Definition of term "local governments" for purposes of reimbursements for personal property tax reductions;
COUNTIES - Definition of term "local governments" for purposes of reimbursements for personal property tax reductions;
FIRE DISTRICTS - Definition of term "local governments" for purposes of reimbursements for personal property tax reductions;
LOCAL GOVERNMENT - Definition of term "local governments" for purposes of reimbursements for personal property tax reductions;
TAXATION AND REVENUE - Definition of term "local governments" for purposes of reimbursements for personal property tax reductions;
MONTANA CODE ANNOTATED - Sections 7-6-1101, 7-12-1103, 15-1-111, 15-6-138, 15-6-145, 15-6-147, 15-10-401, 61-3-509;
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HELD: The term "local governments" as used in section 15-1-111(6), MCA, includes all local government entities, including those generally considered "taxing jurisdictions," that lost revenue as a result of personal property tax reductions.

July 25, 1991

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You requested an opinion concerning:

What is the meaning of the term "local governments" as used in section 15-1-111(6), MCA?

The answer to your question involves interpretation and reconstruction of the efforts during the 1989 special legislative session to provide tax relief for certain classes of personal property. See H.B. 20, 51st Leg. Spec. Sess., 1989 Mont. Laws, 2560. After reviewing the legislative history, as discussed further below, I conclude that the term "local governments" includes all entities that lost revenue as a result of House Bill 20, the personal property tax relief bill.

Section 15-1-111, MCA, appropriates funds to taxing jurisdictions in order to reimburse them for funds lost through personal property tax reductions. Under subsection (3) of this statute, the Department of Revenue calculates the amount of revenue

lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145 and 15-6-147.

Section 15-6-138, MCA, describes class eight property, which includes, among other things, agriculture and mining equipment, and imposes a 9 percent tax. Prior to its amendment during the 1989 special legislative session, class eight property was taxed at 11 percent of its market value. The reimbursement therefore includes the difference between the 11 percent and the 9 percent. Section 15-6-145, MCA, describes class fifteen property as railroad transportation property, and section 15-6-147, MCA, describes class seventeen property as airline transportation property. Because the amount of tax on railroad and airline transportation property is tied to the tax on other property under sections 15-6-145 and 15-6-147, MCA, taxing jurisdictions were also to be reimbursed for any loss incurred through recalculation of the effective tax rate on airline and railroad transportation property. Under section 15-1-111(1)(a), MCA, the reimbursement must also include funds lost through reclassification of new industrial property from class five property to class eight property.

Your question concerns which entities are included in the reimbursement scheme. The body of section 15-1-111, MCA, is written in terms of "taxing jurisdictions." However, section 15-1-111(6), MCA, states:

For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana.

Under rules of statutory construction, the plain meaning of the words used in the statute must be looked at first, to determine legislative intent. If intent cannot be determined from the context of the statute, the legislative history must be examined. Lewis and Clark County v. Department of Commerce, ___ Mont. ___, 728 P.2d 1348 (1986), citing Thiel v. Taurus Drilling Ltd., 218

Mont. 201, 710 P.2d 33 (1985); Dorn v. Board of Trustees of Billings School District, 203 Mont. 136, 661 P.2d 426 (1983).

The term "local governments" does not necessarily denote a particular government entity: it is ambiguous. Article XI, section 1 of the Montana Constitution defines the term "local government units":

The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

It has been suggested that the use of the term "local governments" connotes governmental entities vested with general government or self-governing powers. Such entities are generally cities, towns, or counties. See, e.g., § 7-6-1101(2), MCA, defining local government as "any city, town, county, consolidated city-county, or school district"; § 7-12-1103(6), MCA, defining local government as "a municipality, a county, or a consolidated city-county government." These definitions are not applicable here, however, since they are expressly limited to their respective parts of the Montana Code. The term "local governments" may therefore include local government entities, other than cities, towns, or counties, if the Legislature so intended or the statutory funding scheme suggests such an intent. See also 37 Op. Att'y Gen. No. 22 (1977), 43 Op. Att'y Gen. No. 4 (1989).

There is little, if any, doubt in reviewing the legislative history of section 15-1-111, MCA, that the Legislature intended that smaller local government entities, such as special districts, be included in the local government reimbursement scheme. Section 15-1-111, MCA, was part of House Bill 20 passed during the 1989 special legislative session. House Bill 20 began as the "Canola Bill," designed to classify equipment used in processing canola seed oil as class five property which is taxed at 3 percent of its market value. During the special session, two important bills were amended into House Bill 20: Senate Bill 22, the Governor's personal property tax relief bill, and House Bill 50, the original bill designed to reimburse local governments for money lost through property tax reductions. The minutes of the hearings on Senate Bill 22 are helpful in providing the context for the development of the methods eventually adopted for property tax relief and reimbursement for local government services.

During the Senate Taxation Committee hearing on Senate Bill 22, Don Peoples, former chief executive for Butte-Silver Bow, testified in support of personal property tax reductions. He voiced a concern, however, for replacement revenues. He wanted a guarantee in the bill that there would be replacement revenues "dollar for dollar, at the local government level and at the school district level." He expressed the need to maintain good schools and good local government services. June 24, 1989, Senate Taxation Committee Minutes at 10 (1989 Spec. Sess.). Others echoed Mr. Peoples' concern. See

testimony of Alec Hansen, Gordon Morris, and Wayne Phillips. *Id.* at 11, 12, 17.

Senate Bill 22 passed the Senate and was referred to the House Committee on Natural Resources. At the hearing, there was again significant testimony that Senate Bill 22 should not pass without reimbursement or replacement of revenues supporting the services provided at the local government level. Many advocated that coordination instructions be used so that the passage of Senate Bill 22 would be conditioned upon passage of House Bill 50. July 6, 1989, House Committee on Natural Resources (1989 Spec. Sess.). See testimony of Don Peoples, Evan Barrett, Representative Bradley, Senator Eck. *Id.* at 4, 8, 12-13, 14.

During the House Committee hearing, Representative Cohen asked Representative Rehberg if he knew how much money would be lost to "tax jurisdictions." Representative Rehberg, who was carrying Senate Bill 22 for its primary sponsor, Senator Gage, stated that he could not get a definite figure at that time, but that he intended to "make every effort to see that local governments lose no money." *Id.* at 16.

Although Senate Bill 22 was tabled by the Natural Resources Committee, many of the property tax relief provisions in Senate Bill 22 resurfaced on the Senate floor and were amended into House Bill 20, the "Canola Bill." House Bill 20 was then sent into a free conference committee. The minutes of the free conference committee hearings show that the committee intended to amend House Bill 20 to alleviate all concerns about reimbursing those local government entities that would lose revenue from personal property tax reductions. On July 13, 1989, Senator Lynch moved to adopt amendments to reimburse local government and school districts for money lost in personal property tax reductions. Representative Schye, noting the reference to "local governments" in the amendments, asked Senator Gage, chairman of the free conference committee, if "that [local governments] has been changed in that report to taxing jurisdictions." July 13, 1989 (a.m.), Free Conference Committee on House Bill 20 Minutes at 9 (1989 Spec. Sess.). The minutes indicate the following:

Chairman Gage responded yes that, where it says local governments, it is his understanding that it has been changed to taxing jurisdictions.

Id. at 10. Chairman Gage's response shows how the legislative members in their discussion of the reimbursement scheme used the terms "local government" and "taxing jurisdictions" interchangeably. The main concern was that if an entity lost revenue through property tax reductions it would be reimbursed for that loss. There was to be no decrease or interruption in services provided at the local government level. Senator Lynch's amendments, while initially defeated, were reintroduced and adopted later in the day with

his assurance that "everyone is protected." July 13, 1989 (p.m.), Free Conference Committee on House Bill 20 Minutes at 8 (1989 Spec. Sess.).

The committee minutes referred to above indicate a legislative intent to replace revenues supporting all services provided at the local government level. The minutes do not show an intent to limit reimbursements solely to counties, cities, and towns. They do not show any attempt to create fine distinctions as to what type of entities must be reimbursed. The intent was simply that all local government services--whether administered by cities, towns, counties, school districts, or special districts--dependent upon revenue from personal property taxes were to be reimbursed for losses from personal property tax reductions contained in House Bill 20.

In effect, the use of the term "local governments" does not limit the accepted meaning of "taxing jurisdictions." See §§ 15-10-401 to 412, MCA; 42 Op. Att'y Gen. No. 21 (1987); 42 Op. Att'y Gen. No. 73 (1988); 42 Op. Att'y Gen. No. 80 (1988). As shown by the legislative history, the terms "taxing jurisdictions" and "local governments" were used interchangeably. The intent therefore was that those local government taxing jurisdictions dependent upon revenue from personal property taxes must be reimbursed for losses resulting from passage of House Bill 20.

If local government entities, such as special districts, were not included in the meaning of "local governments" as used in section 15-1-111(6), MCA, much of the purpose of the reimbursement legislation would be defeated. A statute will not be interpreted to defeat its evident object or purpose.

The objects sought to be achieved by the legislation are of prime consideration in interpreting statutes. Lewis and Clark County v. Department of Commerce, 224 Mont. 223, 728 P.2d 1348, 1351 (1986), citing Montana Wildlife Federation v. Sager, 190 Mont. 247, 620 P.2d 1189 (1980). The object of the reimbursement scheme was to reimburse all local government entities that lost revenue as a result of the personal property tax reductions contained in House Bill 20.

THEREFORE, IT IS MY OPINION:

The term "local governments" as used in section 15-1-111(6), MCA, includes all local government entities, including those generally considered "taxing jurisdictions," that lost revenue as a result of personal property tax reductions.

Sincerely,

MARC RAGICOT
Attorney General