

**VOLUME NO. 33**

**Opinion No. 34**

**COUNTY FUNDS - City-county zoning. Sections 16-4101, 16-4701 through 16-4710, 16-1906 and 16-1907, R.C.M. 1947.**

- HELD:**
- 1. A city-county zoning district may not receive monies from other county funds.**
  - 2. A city-county zoning district may not receive funding from the one (1) mill levy provision of section 16-4101, R.C.M. 1947.**

November 2, 1970

Mr. John L. Adams ·  
Yellowstone County Attorney  
Office of the County Attorney  
Billings, Montana 59101

Dear Mr. Adams:

You have requested my opinion on the following questions:

1. Whether a city-county zoning district, created pursuant to sections 16-4701 through 16-4710, Revised Codes of Montana, 1947, may seek miscellaneous expense monies from other county funds.
2. Whether a city-county zoning district created pursuant to sections 16-4701 through 16-4710, R.C.M. 1947, may acquire funds through the one (1) mill levy provision of section 16-4101, R.C.M. 1947.

A board of county commissioners has only such powers as are expressly granted it by statute, or such powers as are necessarily implied to carry out those specifically granted. *State ex rel. Blair v. Kuhr*, 86 Mont. 377, 283 Pac. 786. Sections 16-4701 through 16-4710, R.C.M. 1947, which authorize the creation of city-county zoning districts, contain no special funding provisions. You have inquired into the possibility of transferring monies from other county funds. Such an appropriation is precluded by section 16-1906, R.C.M. 1947, which states in part:

“1. The estimates of expenditures, itemized and classified as required in section 16-1902, and as finally fixed and adopted by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby, and the county commissioners, and every other county official, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively: . . .”  
(Emphasis supplied)

I have been able to find only one instance wherein the court intimated that certain expenditures might be paid from other county funds, *State ex rel. Valley Center Drain District v. Board of Commissioners of Big Horn County*, 100 Mont. 581, 51 P.2d 635. The issue in that case was a legal judgment against the county, a “mandatory expenditure required by law”, and as such constituted an emergency expenditure, within the purview of section 16-1907, R.C.M. 1947. The failure to provide for the special funding of a city-county zoning district in no sense of the term creates a “mandatory expenditure” such as would fall within this exception to the rule of section 16-1906, *supra*.

Not can relief be sought in section 16-4101, R.C.M. 1947. While the legislature made specific mention that Title 16, chapter 47, was created to implement Title 11, chapter 38 comprehensive city-county development plan, no allusion whatsoever was made to Title 16, chapter

41, and it is my opinion that none can be implied. Section 16-4101, R.C.M. 1947, authorizes the board to appoint a zoning commission consisting of five members (three county commissioners, the county surveyor and the county assessor). Sections 16-4701 through 16-4710, R.C.M. 1947, authorize the creation of an entirely different zoning commission. Section 16-4702, R.C.M. 1947, provides in part: "The board of county commissioners shall require the city-county planning boards to act as zoning commission. . . ." The city-county planning board, and therefore the latter zoning commission, consists of not five (5) but of at least nine (9) members. Section 11-3810, R.C.M. 1947.

As can be seen, therefore, no correlation exists as between Title 16, chapter 41, and Title 16, chapter 47, R.C.M. 1947. The former chapter was enacted in 1953, the latter in 1963. The former concerns county zoning districts, managed by five-member zoning commissions. The latter concerns city-county zoning districts managed by nine (9) member zoning commissions. Since the two chapters concern different subjects and contain no provisions otherwise establishing correlation, the former chapter cannot be adopted to fund the latter, Title 16, chapter 47, R.C.M. 1947.

While present funding would be convenient, the fact that the contemplated means are in the best interests of the county is not a controlling argument. "The doctrine of expediency does not enter into the construction of statutes." **Franue v. Fergus County**, 76 Mont. 150, 245 Pac. 962.

THEREFORE, IT IS MY OPINION that:

1. Monies needed to fund a city-county zoning district may not be received or appropriated from other county funds.
2. Monies needed to fund a city-county zoning district may not be provided by the one (1) mill levy provision of section 16-4101, R.C.M. 1947, which relates only to county zoning districts.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General