

**VOLUME NO. 35**

**Opinion No. 37**

**COUNTIES — Funds, classification and appraisal fund, disposition of;  
TAXATION — Classification and appraisal, disposition of county  
funds. Sections 16-1904 and 84-429.8, R.C.M. 1947.**

**HELD: 1. Unexpended monies remaining in a county's classification  
and appraisal fund as of July 1, 1973, may be transferred to  
other county funds; and**

**2. The state department of revenue may not utilize such unexpended monies for classification and appraisal of taxable lands and improvements.**

November 21, 1973

Mr. Bruce McGinnis  
Legal Counsel  
Department of Revenue  
Sam W. Mitchell Building  
Helena, Montana 59601

Dear Mr. McGinnis:

Your office has requested my opinion concerning the following question:

Whether the monies budgeted for classification and appraisal work by the various counties in the state of Montana pursuant to section 84-429.8, R.C.M. 1947, which remain as unexpended funds as of July 1, 1973, may be transferred to the county general fund by the county commissioners or may be utilized by the state department of revenue for the same work responsibility transferred to the department by House Bill 16, Chapter 405, Laws of 1973.

Section 84-429.8, Revised Codes of Montana, 1947, established the tax levy fund to accomplish property classification and previously read as follows:

The board of county commissioners shall create and establish a fund to be known as the "Classification and Appraisal Fund," and may, beginning with the fiscal year which commences July 1, 1965, levy annually a tax not to exceed one (1) mill upon all property in the county subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of such fund, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. All costs and expenses incurred by the board of county commissioners for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by said board; and the board of county commissioners is hereby authorized to declare an emergency and issue such warrants in the manner provided by section 16-1907.

However, the 1973 legislative assembly amended the provisions of section 84-429.8, supra, to reflect the mandate enunciated in Article VIII, section 3, Montana Constitution, which requires the state to appraise, assess and equalize the valuation of all property. That amended section specifically provides:

The **state legislature** shall create and establish a fund to be known as the "**property tax administration fund,**" and may levy annually a tax **not to exceed an amount appropriated therefor by the legislature** upon all property in the **state** subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of **the state treasurer**, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. **All monies in this fund shall be available to the state legislature for appropriation to the proper agency. No monies shall be expended from this fund without an appropriation by the legislature.** All costs and expenses incurred by the **department of revenue** for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by **the department.** (Emphasized portions indicate amendments)

The legislative assembly thus transferred the duties of property appraisal and classification from the counties to the state.

Previously, under section 16-1904 (3), R.C.M. 1947, monies remaining in the county fund for appraisal and classification work at the end of the fiscal year were retained in that fund and used to reduce the mill levy for the succeeding year. Under section 84-429.8, however, commencing July 1, 1973, counties no longer have authority to levy a tax for property appraisal and classification. The question then is how one disburses any unexpended county classification and appraisal fund.

A provision for the transfer of unexpended funds to other accounts (section 16-2048) was repealed by the legislature in 1971. However, also in 1971, the legislative assembly added a second paragraph to section 16-1904 (3), providing:

If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, such excess may be transferred to other funds as the county commissioners deem for the best interest of the county after a public hearing. Notice of said hearing must be given not less than thirty (30) days prior to said hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. Said notice must state the date, time and place of said hearing and state generally the purpose and proposed use of said funds.

Since section 84-429.8 has transferred classification and appraisal work from the counties to the state, after July 1, 1973, a county fund for such purposes is no longer necessary, and any cash balance remaining in that fund after July 1, 1973, will be excess. Such excess cash balance may then be transferred to other county funds pursuant to section 16-1904 (3), supra.

Further, when the legislative assembly transferred the duties of property appraisal and classification from the counties to the state, it set up a new permissive mill levy for funding these duties. Section 84-429.8 now provides that the state establish its own fund for classification and appraisal work. No provision was made to transfer any unexpended county classification and appraisal funds to the state, and the legislature is presumed to act with full knowledge of the existing law. **Teamsters, Local #45 v. Mont. Liquor Control Bd.**, 155 Mont. 300, 471 P.2d 541. It would appear, then, that the legislature did not intend that unexpended county monies for classification and appraisal, raised by local county taxes, be transferred to the state. Any such cash balances should remain county monies, transferrable to other county funds as directed in section 16-1904 (3), *supra*.

**THEREFORE, IT IS MY OPINION:**

1. Unexpended monies remaining in a county's classification and appraisal fund as of July 1, 1973, may be transferred to other county funds pursuant to section 16-1904, *supra*.

2. The state department of revenue may not utilize such unexpended monies remaining in a county's classification and appraisal fund as of July 1, 1973, for classification and appraisal of taxable lands and improvements pursuant to section 84-429.8, *supra*.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General