

VOLUME NO. 36**Opinion No. 94**

TAXATION — All-purpose mill levy; Sections 11-1024.1, 11-1024.2, 11-1024.3, 11-1024.4, 11-1832, 11-1932, 16-5113, 84-4701.1, 84-4701.2, and 84-4701.6, Revised Codes of Montana 1947.

HELD: The levies required by sections 11-1024.1 and 11-1024.2, R.C.M. 1947 (group insurance for firemen), sections 11-1024.3 and 11-1024.4, R.C.M. 1947 (group insurance for policemen), section 11-1832, R.C.M. 1947 (minimum wages for policemen), and section 11-1932, R.C.M. 1947 (minimum wages for firemen), must be included within the sixty-five (65) mill all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, R.C.M. 1947.

August 9, 1976

Ms. Judith H. Carlson, Director
Department of Community Affairs
Capitol Station
Helena, MT 59601

Dear Ms. Carlson:

You have requested my opinion on the following question:

Must the levies required by sections 11-1024.1 and 11-1024.2, R.C.M. 1947 (group insurance for firemen), sections 11-1024.3 and 11-1024.4, R.C.M. 1947 (group insurance for policemen), section 11-1832, R.C.M. 1947 (minimum wages for policemen), and section 11-1932, R.C.M. 1947 (minimum wages for firemen), be included within the 65 mill all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, R.C.M. 1947, or may they be levied in addition to the 65 mills.

The controlling statutes are sections 84-4701.1 and 84-4701.2, R.C.M. 1947. Section 84-4701.1, *supra*, provides:

It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose annual mill levy **in lieu of the multiple levies now authorized** by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R.C.M. 1947. This act shall not be construed as **repealing** those statutes providing for multiple separate levies. (Emphasis supplied)

The maximum rate of taxation allowed if the all-purpose levy is utilized is contained in section 84-4701.2, *supra*, and provides in part:

Notwithstanding the provisions of the statutes of Montana to the contrary, the **cities and towns** of the state of Montana **may make an all-purpose annual levy** upon the assessed value of all the taxable property in such cities and towns, for municipal purposes **in lieu of the multiple levies now authorized** by statutes. **The total of such all-purpose levy shall not exceed sixty-five (65) mills on the dollar, which levy shall not include any levies necessary for bonded indebtedness, judgments, or special improvement district revolving** (funds) in addition to all-purpose levy as provided in sections 84-4701.1 and 84-4701.6... (Emphasis supplied)

These two statutes make it quite clear that the all-purpose levy is an optional levy and if a municipality elects to utilize the all-purpose levy, that levy is "in lieu of the multiple levies now authorized" by law and the maximum rate of the all-purpose levy shall not exceed "sixty-five (65) mills on the dollar". The "in lieu of" language contained in sections 84-4701.1 and 84-4701.2, *supra*, indicates

that the all-purpose levy is exclusive as to all other levies except those which the Legislature has specifically exempted. Section 84-4701.6, R.C.M. 1947, authorizes levies in addition to the all-purpose levy for (1) bonded indebtedness, (2) judgments, and (3) special improvement district revolving funds. Section 16-5113, R.C.M. 1947, provided for the financing of local government study commissions by a levy "in addition to the all-purpose levy...." In both of these statutes the Legislature recognized the exclusiveness of the all-purpose levy by providing for specific exemptions to it.

As I said in 36 Opinions of the Attorney General, No. 61:

It is apparent that this all-purpose levy is an optional system of financing a city's operations. It provides an alternative to financing through separate levies for each city function. Municipalities which choose this method of financing must include within the all-purpose levy those levies which would otherwise be imposed individually and **which are not specifically exempt from the all-purpose levy.** (Emphasis supplied) Also, see 31 Opinions of the Attorney General, No. 18.

Sections 11-1024.1, 11-1024.2, 11-1024.3, 11-1024.4, 11-1832, and 11-1932, supra, all pertain to expenses of cities that must be funded by assessment and levy of taxes. If the multiple levy system of taxation were utilized, these levies would "be imposed individually" and in addition to all other authorized taxes. However, where a city elects to utilize the all-purpose levy, those expenses must be paid out of revenues derived from within the sixty-five (65) mill limitation absent any specific exemption from that levy. In this case, no such exemption exists.

THEREFORE, IT IS MY OPINION:

The levies required by sections 11-1024.1 and 11-1024.2, R.C.M. 1947 (group insurance for firemen), sections 11-1024.3 and 11-1024.4, R.C.M. 1947 (group insurance for policemen), section 11-1832, R.C.M. 1947 (minimum wages for policemen), and section 11-1932, R.C.M. 1947 (minimum wages for firemen), must be included within the sixty-five (65) mill all-purpose levy authorized by sections 84-4701.1 and 84-4701.2, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General