

VOLUME NO. 37

OPINION NO. 101

COUNTIES - Budgeting; fixing officials' salaries; interest on unpaid warrants; PUBLIC FINANCE - County budget; interest on unpaid county warrants; PUBLIC OFFICERS - Computing salaries of county officers; TAXATION - Taxable value of property as basis for county officers' salaries; REVISED CODES OF MONTANA, 1947 - Sections 16-1810, 16-1904, 16-2604, 25-605, 25-609.1, 53-102, 84-406, 84-429.14, 84-3808, 84-3809.

- HELD: 1. The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-1978 fiscal year pursuant to section 25-605, R.C.M. 1947, is the taxable value determined under assessment procedures in section 84-406, R.C.M. 1947, for the current 1977-1978 fiscal year.
2. Pursuant to sections 25-605 and 25-609.1, R.C.M. 1947, salaries of county officers must be fixed by July 1. In the event a county is unable to fix the salary on or before that date, county officials are entitled to salary increases retroactive to July 1.
3. Counties may budget for and pay interest on unpaid, registered warrants.

20 December 1977

Chris Gardner, Chairman
Art Woods, Commissioner
Milan Kovich, Commissioner
Board of County Commissioners
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Commissioners Gardner, Woods and Kovich:

You have requested my opinion concerning the following questions:

1. In computing the salaries of county officials for the fiscal year commencing July 1, 1977, pursuant to section 25-605, R.C.M. 1947, is a county required to use the taxable valuation

of county property prepared for use in the 1977-78 fiscal year, or may the county use the taxable valuation of the prior fiscal year?

2. When a county finally adopts a budget for the 1977-1978 fiscal year, are any salary increases to which county officials may be entitled under section 25-605, R.C.M. 1947, payable retroactively to July 1, 1977?
3. If a county is unable to adopt a budget and fix the tax levy on the second Monday of August because of the unavailability of necessary taxable valuation information, may the county budget for and pay interest on unpaid, registered warrants which result from the county's inability to adopt a budget and levy and collect taxes?

I

Your first question arises as the result of the amendment of section 25-605, R.C.M. 1947, by section 1 of chapter 493, Laws of 1977 (Senate Bill 192). As amended, that section provides in relevant part:

Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in 16-3302, shall be based on the population and taxable valuation of the county as of January 1, 1977, in accordance with the following schedule: (Emphasis added.)

* * *

The schedule set forth in section 25-605 links salaries of county officials to two factors; first, county population and, second, county taxable valuation. There is a schedule for each factor and, generally, as population and taxable valuation increase so do salaries. An amount taken from each schedule is plugged into a formula which is used to compute actual salaries.

The 1977 amendment increased salary schedules and provided that one-half of the increase is payable commencing the 1977-1978 fiscal year and the remaining one-half commencing the 1978-1979 fiscal year. Section 2 of chapter 493, Laws of 1977. The 1977 amendment also added the words "as of January 1, 1977."

Prior to the 1977 amendment it was settled law that the taxable value referred to in section 25-605 was the value used for the new fiscal year. In the case of Brown v. Board of County Commissioners, 165 Mont. 391, 529 P.2d 328 (1974), the Montana Supreme Court was confronted with the identical question presented here as it pertained to fixing county officials' salaries for the 1973-1974 fiscal year. The Court pointed out that section 25-605 must be read in conjunction with section 25-609.1, R.C.M. 1947, which requires the Board of County Commissioners to fix official salaries for the next fiscal year on or before July 1. Section 25-609.1 has not been amended since the Brown decision and provides:

Commissioners to fix salaries according to salary schedule. The county commissioners shall, by resolution on or before July 1 of each year, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, clerk of the district court for the following fiscal year in conformity with the appropriate statutory salary schedule pertaining to each office. The salary schedule used for each office shall be the statutory schedule in effect on the first day of the following fiscal year. (Emphasis added.)

The Court read section 25-609.1 to impose "a clear legal duty to compute the taxable valuation (for use during the next fiscal year) prior to July 1, the first day of the next fiscal year ***, " 165 Mont. at 393, notwithstanding other statutory provisions which permit reporting of valuation figures to the Department of Revenue as late as the second Monday in July (section 84-406, R.C.M. 1947), and the fixing of the tax rate by county boards of commissioners as late as the second Monday in August (section 84-3805, R.C.M. 1947). With regard to the fiscal year July 1, 1973 to June 30, 1974, the Court went on to hold that section 25-609.1 required computation of taxable valuation for the 1973-1974 fiscal year before July 1, 1973. That new, 1973-1974 valuation, was to be used in computing officials' salaries under

section 25-605 for the 1973-1974 fiscal year. Brown requires computation of 1977 taxable value before July 1, 1977, and the fixing of county officials' salaries on or before the same date.

If Brown is still viable law, counties must use the new, 1977-1978 taxable value as the basis for computing county officials' salaries under section 25-605 for the 1977-1978 fiscal year. The present question is whether the 1977 amendment which inserted "as of January 1, 1977" compels a different result than that reached in Brown. I conclude it does not.

The taxable valuation of a county is determined pursuant to assessment procedures set forth in section 84-406, R.C.M. 1947, which requires the Department of Revenue (DOR) or its agents, beginning January 1 of each year, to assess all property in each county which is subject to taxation. County Assessors are agents of DOR for purposes of assessing county property and reporting valuation. Section 84-402(2), R.C.M. 1947. The assessment procedure continues over a several month period. Final valuations must be reported to DOR no later than the second Monday of July of the same year, section 84-406, R.C.M. 1947, and is the basis for determining the rate of tax levy for the fiscal year beginning July 1 of each year, section 16-1904(6), R.C.M. 1947.

The question raised by the 1977 Amendment to section 25-605 is whether the taxable valuation of a county "as of January 1, 1977" is the valuation as already calculated and existing on said date--i.e., the valuation for the old 1976-1977 fiscal year--or the valuation determined under assessment proceedings which commenced on January 1, 1977--i.e., the valuation used for the new 1977-1978 fiscal year. It is my opinion that the amendment requires the use of the new taxable value.

Although the tax assessment process begins January 1 and continues until July 1, all property, with minor exceptions, is valued as of January 1 of the assessment year. In the case of motor vehicles, specific provision is made requiring the assessment of vehicles "as of January 1," although the actual assessment may be made on the vehicle registration date. Sections 84-406(4)(a) and 53-162, R.C.M. 1947. Section 84-406, R.C.M. 1947, requires as a general rule, that property is to be assessed "to the person by whom it was owned *** at 12 midnight of January 1 next preceding"

and the entire section is entitled "GENERAL ASSESSMENT DAY." (Emphasis added.) I am informed by the Department of Revenue that it interprets section 84-406, R.C.M. 1947, as requiring property to be valued as of January 1 of the assessment year, whatever date the assessment is actually made, and has implemented this interpretation in its rules and in practice. I concur with DOR's interpretation, which finds further support in the fact that the statutory lien for property taxes attaches at 12 midnight, January 1 of each year, sections 84-3808 and 84-3809, R.C.M. 1947.

Since 1965, the Legislature has increased salary levels of county officers at two year intervals. Chapter 216, Laws of 1965; chapter 231, Laws of 1967; chapter 284, Laws of 1969; chapter 265, Laws of 1971; chapter 391, Laws of 1973; chapter 102, Laws of 1975; chapter 493, Laws of 1977. In conjunction with the 1975 increase the Legislature attached a provision making the increase payable in two steps, one-half during the 1975-1976 fiscal year and the remaining one-half the next fiscal year. Section 2 of chapter 195, Laws of 1975. The legislation, however, did not change the language of the first paragraph of section 25-605 which made salaries payable "based on population and taxable valuation in accordance with the following schedule." This created potential conflict with Brown. In Brown, the Supreme Court held that salaries must be recomputed each year, based on the new population and taxable valuation figures. Thus, under the Brown interpretation, a significant increase in population and/or taxable value from the 1975-1976 fiscal year to the 1976-1977 fiscal year would have entitled county officers to increases for the 1976-1977 year in addition to increases which were computed on the basis of 1975-1976 values. Arguably, the Legislature did not intend two separate salary increases when it enacted the 1975 amendment but intended that the salary level for both the 1975-1976 and 1976-1977 fiscal years be fixed by reference to the population and taxable valuation figures for the 1975-1976 fiscal year, with the increase payable in two steps. The clear effect of the 1977 amendment is to eliminate the potential for conflicting interpretations, making it clear that salary levels for the two subsequent fiscal years are based on the population and taxable value figures for the first fiscal year only.

Since taxable value of property as of January 1, 1977, is that value which has been determined pursuant to section 84-406 for use in the 1977-1978 taxable year, such value must be used by the county in fixing county officers' salaries under section 25-605.

II

Your second question arises as the result of the failure to complete the tax assessment process by the July 1 deadline specified in section 25-609.1 and Brown. It is my understanding that this failure was common to several counties and was caused in large part by ongoing revaluation required under section 84-429.14, R.C.M. 1947. Since the taxable value for the 1977-1978 fiscal year was unavailable on July 1, salaries of county officers could not be computed until a later date. Nevertheless, the salaries, once computed, are retroactive to July 1. Section 2 of chapter 195, Laws of 1977, is explicit and mandatory:

One-half of all salary increases provided for in section 1 (section 25-605) shall be effective July 1, 1977, and the remainder of such increases shall be effective July 1, 1978. (Emphasis added.)

See also Brown, 165 Mont. at 394-395.

III

Your final question concerns budgeting for and paying interest on unpaid, registered warrants which result from a county's inability to adopt a budget and levy taxes on the second Monday of August. It is my understanding that several of the counties have been unable to adopt budgets by the deadline set in section 16-1904(6), R.C.M. 1947, because of the ongoing property reassessment and delays in computing a final valuation of property. In some counties budget adoption has been significantly delayed and in turn tax collections have been delayed.

The Legislature has made express provision for unpaid warrants. Section 16-1810, R.C.M. 1947, provides:

Warrants--specification-presentation and payment.
Warrants drawn by order of the board on the county treasurer for the current expenses during each year must specify the liability for which they are drawn and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

Boards of county commissioners are authorized to pay interest on unpaid warrants. Section 16-2604, R.C.M. 1947, provides:

Registry of warrants-interest. When any county warrant, any high school warrant or any school district warrant hereafter issued is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until paid the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law. (Emphasis added.)

Since counties have authority to pay interest on warrants, provision for such interest is an appropriate budget item.

THEREFORE, IT IS MY OPINION:

1. The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-1978 fiscal year pursuant to section 25-605, R.C.M. 1947, is the taxable value determined under assessment procedures in section 84-406, R.C.M. 1947, for the current 1977-1978 fiscal year.
2. Pursuant to sections 25-605 and 25-609.1, R.C.M. 1947, salaries of county officers must be fixed by July 1. In the event a county is unable to fix the salary on or before that date, county officials are entitled to salary increases retroactive to July 1.
3. Counties may budget for and pay interest on unpaid, registered warrants.

Very truly yours,

MIKE GREELY
Attorney General