

VOLUME NO. 37

OPINION NO. 109

INSURANCE - Schools, property and liability insurance;
SCHOOLS AND SCHOOL DISTRICTS - Insurance; SCHOOLS AND SCHOOL
DISTRICTS - Taxation, levy for liability insurance;
TAXATION - Special levy for school district's purchase of
liability insurance; TAXATION - Elections, not required for
levy for liability insurance of school districts; REVISED
CODES OF MONTANA, 1947 - Sections 72-8212, 75-6806, 75-
6806(1), 75-6923, 82-4303(2), 82-4305(2), 82-4306(3), 82-
4307(2), (2) (repealed 1974), 82-4309, 82-4310, 82-4322.1;
1972 MONTANA CONSTITUTION - Art. II, section 18; 35 OP.
ATT'Y GEN. NO. 44 (1973).

- HELD: 1. The annual property tax provided by section 82-4309 may be used to fund all policies of insurance required or permitted by law. This opinion reverses the contrary language in 35 OP. ATT'Y GEN. NO. 44 (1973)
2. The levy provided by section 82-4309 does not require an election. The school trustees may authorize the levy upon determining that such levy is in the best interests of the school district.

30 January 1978

Jack Yardley, Esq.
Park County Attorney
Park County Courthouse
Livingston, Montana 59047

Dear Mr. Yardley:

You have requested my opinion on the following questions:

1. Does section 82-4309, R.C.M. 1947, which permits school districts to "levy an annual property tax in an amount necessary to fund the premium for insurance...as herein authorized" extend to the funding of all types of insurance or merely liability insurance?
2. Does such levy require an election?

You state disagreement with a previous Attorney General's opinion answering your first question. The opinion held that:

[t]he annual property tax permitted under section 82-4309 may be used to pay premiums on liability insurance, but may not be used to pay premiums on property insurance of school districts.

35 OP. ATT'Y GEN. NO. 44 (1973). I have reviewed that opinion and the 1977 amendments to the Montana Comprehensive State Insurance Plan and Torts Claim Act, sections 82-4301 to 4335. I am of the opinion that the 1977 amendments indicate the prior opinion construed the act too narrowly.

The act permitted political subdivisions to levy an annual property tax "to pay the premium for insurance 'as herein authorized.'" Laws of Montana (1973), ch. 380, sec. 9 (located at section 82-4309, R.C.M. 1947 (Supp. 1975)). The "authorization" in turn was located in section 6 of the act (section 82-4306, R.C.M. 1947 (Supp. 1975)) which provided "[a]ll political subdivisions of the state shall have the authority to procure insurance under this act" (emphasis added). "Insurance" was not defined.

The 1973 opinion construing "insurance" to mean liability insurance was based on the premise that the act authorized insurance coverage only for occurrences for which the state or political subdivisions may be held liable, or "liability" insurance. 35 OP. ATT'Y GEN. NO. 44. This conclusion was reached because the act defined "personal injury," "property damage," and "claim" in terms of tort liability. *Id.* This was a narrow reading of the statutory language and considered only the tort claims aspects to which the definitions related.

A section of the act was apparently overlooked. The 1977 amendments indicate the term "insurance" should be construed generally.

The law as originally enacted set minimum policy limits for both political subdivisions and the state. Laws of Montana (1973), ch. 380, sec. 7. Though this section was subsequently repealed (Laws of Montana (1974), ch. 143, sec. 2), it is evidence of the Legislature's intention regarding the scope of the act.

Section 7 provided in relevant part:

Every policy ... of insurance purchased by a political subdivision, or the state department of administration for the state as permitted under the provisions of this act shall provide:

(1) With respect to casualty and liability policies ... the insurance carrier ... shall pay ... up to a limit of not less than one million dollars ... in any one .. occurrence.

(2) With respect to all other types of insurance for the state, the limits and amounts of insurance shall be determined and set by the department ... in accordance with the provisions of section 3 of this act. (Emphasis added.)

Laws of Montana (1973), ch. 380, sec. 7 [codified at section 82-4307, R.C.M. 1947 (Supp. 1973)].

The act clearly contemplates more than liability insurance. The act provided for the establishment of a comprehensive insurance plan for the state including property, casualty, liability, crime, fidelity and other types of insurance deemed "reasonable and prudent." Section 82-4303. The Legislature intended to permit political subdivisions to set up a similar plan and fund it with a tax levy. This was clarified by the 1977 amendments to the act.

Section 82-4306 originally stated in general terms that political subdivisions "shall have the authority to procure insurance under this act," and now specifically provides:

All political subdivisions ... may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part (emphasis added.)

Section 82-4306(1), R.C.M. 1947 (Supp. 1977).

Section 82-4309 provides for the tax levy and was similarly amended:

Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve funds as herein authorized

Section 82-4309, R.C.M. 1947 (Supp. 1977).

Section 82-4306 now substantially conforms to the statutes authorizing the comprehensive state plan. See, section 82-4303(3), section 82-4305(3), (4).

While the definitions upon which the previous opinion was based speak of tort liability, the act when viewed in its entirety is much broader. The act established not only a mechanism for dealing with claims previously barred by the defense of sovereign immunity, but also authorized a comprehensive plan to protect against a number of risks. Section 83-4303. The terms "personal injury," "property damage" and "claim" are used only in that part of the act relating to claims arising from the abolition of sovereign immunity, see

sections 82-4311 to 4335. They have no reference to the statutes authorizing a system of comprehensive protection. Therefore, it is my opinion the Legislature intended to permit political subdivisions to establish insurance plans, and to give them the option of financing these plans with the annual property tax provided in section 82-4309.

You also question whether voter approval is necessary to authorize the levy.

Neither section 82-4309, which permits the levy, nor any statute or constitutional provision governing school finance requires school trustees to obtain voter approval prior to authorizing the levy. The revenue derived from the special levy comprises a fund separate and distinct from the general fund. 35 OP. ATT'Y GEN. NO. 44 (1973). Section 75-6923 which requires an election prior to adopting a general fund budget in excess of the maximum-general-fund-without-a-vote, is not applicable. The school trustees are the public officers responsible for transacting all fiscal business of the district, section 75-6806, and therefore may authorize the levy without seeking voter approval upon determining that such levy is "in the best interests of the district." Section 75-6806(8).

THEREFORE, IT IS MY OPINION:

1. The annual property tax provided by section 82-4309 may be used to fund all policies of insurance required or permitted by law. This opinion reverses the contrary language in 35 OP. ATT'Y GEN. NO. 44 (1973).
2. The levy provided by section 82-4309 does not require an election. The school trustees may authorize the levy upon determining that such levy is in the best interests of the school district.

Very truly yours,

MIKE GREELY
Attorney General