

VOLUME NO. 37

OPINION NO. 118

COUNTIES - Eligibility for disaster relief under section 79-2501, R.C.M. 1947; DISASTERS - Eligibility of counties for disaster relief under section 79-2501, R.C.M. 1947; RULES AND REGULATIONS - Validity of Department of Administration rule governing eligibility for disaster relief; STATE AGENCIES: DEPARTMENT OF ADMINISTRATION - Validity of Department of Administration rule governing eligibility for disaster relief; REVISED CODES OF MONTANA, 1947 - Sections 16-1904(3), 79-2001, 79-2501, et seq., 82-4204.1(2), 84-406, and 84-4103.

- HELD: 1. A county road reserve established pursuant to section 16-1904(3) to pay costs of county road operations during the first four months of the next fiscal year is not a financial resource available to meet emergencies and disasters.
2. The Department of Administration's formula for determining eligibility of counties for disaster and emergency relief under section 79-2501, R.C.M. 1947, is inconsistent with statutory standards and void insofar as it requires counties to expend their entire road "reserves" for emergency snow removal operations as a prerequisite to receiving state aid. The department must adopt a new regulation.

28 February 1978

Gordon T. White, Esq.
Valley County Attorney
Valley County Courthouse
Glasgow, Montana 59230

Dear Mr. White:

You have requested my opinion concerning the validity of certain regulations adopted by the Department of Administration to implement the State's Emergency And Disaster Fund Act, section 79-2501, et seq., R.C.M. 1947. Those regulations set standards for determining eligibility of political subdivisions and entities of the state for emergency disaster relief under the act. Specifically, you question the method by which the Department of Administration determines the financial resources available to applicants to meet the emergency or disaster at hand.

The State Emergency and Disaster Fund is established in Title 79, chapter 25, R.C.M. 1947. The Governor is authorized to expend up to \$750,000 in any one biennium for emergency and disaster relief. As a result of recent prolonged winter blizzard conditions, several eastern Montana counties have applied to the Governor for emergency aid. The aid is needed for snow removal operations.

Specific statutory standards for emergency and disaster relief are prescribed in section 79-2501, which provides:

GOVERNOR MAY AUTHORIZE EXPENDITURE IN CASE OF EMERGENCY OR DISASTER. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies that expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics or disease, plagues of insects, fires, floods, energy emergencies or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws. (Emphasis added.)

Although the Governor is delegated the power to grant emergency aid, the Department of Administration is given rule making powers to implement the act. Section 79-2503 provides:

IMPLEMENTATION AND ADMINISTRATION. The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration. (Emphasis added.)

The department has adopted regulations which govern determination of eligibility for disaster aid and has established application procedures and forms. Briefly summarized, the regulations describe the types of emergencies and disasters for which aid is available and require governmental entities applying for aid to estimate the total expenditures necessary to respond to the emergency. The regulations establish a formula for computing the applicant's available financial resources for meeting the emergency. It is this formula which is the subject of your opinion request.

The formula in question applies to municipalities and counties, and provides as follows:

The board or council shall estimate the financial capability of the entity by completing the following calculations for each fund or account involved. The financial resources available to the entity shall include the maximum permissive levy for the fund or account financing the governmental function that is obligated to respond to the emergency. The estimated funds available for the emergency shall be calculated as follows:

Cash balance including reserves as of June 30, 19__	\$ _____
Receipts from two mill emergency levy	_____
Receipts from maximum permissive levy and other anticipated revenues	_____
SUB TOTAL	\$ _____
Less regular operating budget for current year	\$ _____
BALANCE AVAILABLE TO RESPOND TO EMERGENCY	\$ _____

If the total estimated expenditures necessary to respond to the emergency are greater than the estimated resources available for the emergency, the board or council may request the Governor to declare an emergency and to initiate action to

provide State financial assistance in accordance with such deceleration. The application should be made on the forms attached hereto.

In the case of eastern Montana counties struck by blizzard conditions, there is a snow removal emergency and the county budget, accounting, and tax entity available for deferring snow removal charges is the county road fund. Thus, the above formula as applied by the department to these requests for emergency aid, involves the following computation:

Cash balance of county road fund as of June 30, 1977	\$ _____
Add: Projected receipts from two mill emergency levy	_____
Add: 1977-1978 fiscal year tax receipts for county road fund from maximum permissive levy	_____
SUB TOTAL	\$ _____
Less, 1977-1978 fiscal year road fund operating budget	_____
TOTAL - Balance considered as available to meet emergency.	\$ _____

The net result of the department's formula is to require counties to expend or commit their entire road "reserves" to snow removal emergencies before they become eligible for state aid. In counties where emergency snow removal costs equal or exceed the balance of the road reserve, there would be no operating funds for roads during the first four months of the 1978-1979 fiscal year.

The narrow question presented by your request is whether the requirement that counties must first use their "reserves" to meet emergencies and disasters is consistent with the statutory standard set forth in section 79-2501. "It is a fundamental principle of law that for a rule or regulation adopted by a public administrative body to be valid it must be within the authority delegated to such body or officer." Montana Milk Control Board v. Community Creamery, 139 Mont. 523, 530, 366 P.2d 151 (1961). That rule has been codified in the Montana Administrative Procedure Act, section 82-4204.1(2), R.C.M. 1947, which provides:

Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Emphasis added.)

Section 79-2001 establishes statutory eligibility standards for emergency aid. Financial need is one of the criteria for aid; the important language is underlined in the text of section 79-2501 quoted supra. The question presented in your opinion request is whether the department formula comports with the statutory standard. More specifically, are reserves in a county road fund available to meet and pay for snow removal emergencies? I conclude they are not.

To describe the nature and function of a county road "reserve" it is first necessary to summarize county budget and tax levy procedures. Counties operate on a July 1 to June 1 fiscal year. Establishment of a budget and collection of taxes for the fiscal year does not coincide with the commencement of a new fiscal year. A county budget is not established until the second Monday in August following the beginning of the new fiscal year, section 84-406, R.C.M. 1947, and county tax collections for the year do not begin until November 1 following the commencement of the new fiscal year, see section 84-4103, R.C.M. 1947. As a result, counties incur continuing expenses during the first four months of each fiscal year without receiving offsetting tax revenue. To alleviate the hardship of running the county for the first four months of each new fiscal year on a debt basis, and registering warrants for expenses incurred during that period, the Legislature has made specific provision for a "reserve" to be funded by tax levies during the prior fiscal year. Section 16-1904(3), R.C.M. 1947, provides:

The board shall then determine the amount to be raised for each fund by tax levy by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for

the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third (1/3) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund. (Emphasis added.)

The term "reserve" is in a sense a misnomer. The funds raised by levy for the reserve, in this case a road reserve, are nothing more than operating funds for the first four fiscal months. The reserve provision and its terminology are a direct result of the disjunction of dates provided for the establishment of county budgets, the commencement of tax collections and the commencement of the fiscal year. As a practical matter, the monies raised by the yearly tax levy, including levy for a reserve, generate revenue for a twelve month period running from November 1 to October 31, while also providing funds to pay for any deficit incurred by expenditures made during the first four fiscal months in excess of cash on hand at the end of the prior fiscal year as the result of the prior year's levy for a reserve. Since the reserve moneys are raised and made available expressly for county operations of the first four months of the fiscal year, reserves created pursuant to section 16-1904(3) are not financial resources available to meet emergencies and disasters.

In its present form, the department's regulation requires counties to use their road reserves for emergency snow removal. Available county resources for snow removal emergencies are determined by adding the county's cash balance as of June 30, 1977, estimated receipts from the two mill

emergency levy authorized by section 11-4305, R.C.M. 1947, estimated receipts from a maximum permissive road levy, and other estimated, anticipated revenue, from which sum is subtracted only the 1977-78 fiscal year operating budget for county roads. No provision is made for leaving any reserve authorized by the County Commissioners pursuant to section 16-1904 and funded by tax levy. Insofar as the formula fails to make provision for maintaining the integrity of the road reserve, the regulation is inconsistent with section 79-2501 and void.

The department must adopt a new regulation which does not require counties to expend their reserve to meet emergency and disaster situations. Given the emergency nature of requests for disaster relief by eastern Montana counties, and the immediate need for a new regulation, it is appropriate for the department to establish an emergency regulation pursuant to the Montana Administrative Procedure Act, section 82-4204(2), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. A county road reserve established pursuant to section 16-1904(3) to pay costs of county road operations during the first four months of the next fiscal year is not a financial resource available to meet emergencies and disasters.
2. The Department of Administration's formula for determining eligibility of counties for disaster and emergency relief under section 79-2501, R.C.M. 1947, is inconsistent with statutory standards and void insofar as it requires counties to expend their entire road "reserves" for emergency snow removal operations as a prerequisite to receiving state aid. The department must adopt a new regulation.

Very truly yours,

MIKE GREELY
Attorney General