

VOLUME NO. 37

OPINION NO. 155

COUNTIES - Budget, all counties not restricted to five percent (5%) increase; REVISED CODES OF MONTANA, 1947 - Section 84-310.

HELD: Section 84-310, R.C.M. 1947, does not impose a restriction of only a five percent (5%) increase over the preceding years budget on counties which can produce a budget equal to one hundred and five percent (105%) of the preceding year's budget without exceeding the statutory mill levy.

3 August, 1978

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion concerning the following question:

Does section 84-310, R.C.M. 1947, restrict all counties to a five percent (5%) increase over the preceding years budget?

Section 84-310, R.C.M. 1947, is titled "Temporary Authority to Exceed Mill Levy Limitations in Certain Cases" and the statute provides:

Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding years budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105%.

The title of the Act reflects the purpose of section 84-310, R.C.M. 1947, that is, to allow counties to adopt a budget equal to one hundred and five percent (105%) of the preceding years budget even if such a budget would exceed the statutory mill levy limitation of a county. By statute, the authority to exceed mill levy limitations is restricted only to those counties which, because of the limited taxable value, could not provide for a budget equal to one hundred and five percent (105%) of the preceding years budget without exceeding the existing mill levy limitation. Counties in such a situation are allowed by the statute to budget for a five percent (5%) increase over the preceding years budget, "statutory mill levies notwithstanding," but are restricted to an amount equal to one hundred and five percent (105%) of the last year's budget.

The title of the act suggests that the act applies only in certain cases. The use of the word "unless" in the statute suggests that the temporary authorization to exceed mill levy limitations provided in section 84-310, R.C.M. 1947, applies only to those counties which must exceed the existing mill levy limitation to maintain a five percent (5%) increase in the county budget. If a county can maintain a five percent (5%) increase without exceeding the mill levy limitation, the statute does not apply.

There is no indication that the statute is intended to mandate an increase of only five percent (5%) in the budget of all counties. As the title suggests the statute applies only to "certain cases"--cases where the county must exceed

the mill levy limitation to maintain an adequate budget as a result of a declining tax base. A county not in this situation is not restricted in any manner by the language of section 84-310, R.C.M. 1947. Such counties are limited in the adoption of a budget only by the existing statutory mill levy limitation applicable to the county and are free to provide for any budget which does not exceed the mill levy limitation.

THEREFORE, IT IS MY OPINION:

Section 84-310, R.C.M. 1947 does not impose a restriction of only a five percent (5%) increase over the preceding years budget on counties which can produce a budget equal to one hundred and five percent (105%) of the preceding year's budget without exceeding the statutory mill levy limitation.

Very truly yours,

MIKE GREELY
Attorney General