

VOLUME NO. 37

OPINION NO. 25

COUNTIES - Use of revenue sharing or county tax funds;
COUNTY MUSEUMS - Funding for; COUNTIES - Use of tax or
revenue sharing funds by non-profit corporations; COUNITIES -
Tax levies for support of museums; REVISED CODES OF MONTANA,
1947 - Sections 16-1163 and 16-1164.

HELD: A non-profit corporation operating a museum or art
gallery in the State of Montana is not eligible to
receive revenue sharing or county tax funds.

16 May 1977

William J. Krutzfeldt, Esq.
Deputy County Attorney
Custer County Courthouse
Miles City, Montana 59301

Dear Mr. Krutzfeldt:

You have requested my opinion on the following question:

May a private non-profit corporation operating a
museum and art gallery receive revenue sharing or
county tax funds?

There is little doubt that museums may be established by
cities and towns or counties and the cost borne by tax levy
(see sections 62-208 and 62-101, R.C.M. 1947). However, the
question is may non-profit corporations share in such funds.

Two sections dealing with special powers of county commis-
sioners are applicable to this discussion. Section 16-1163
gives the Board of County Commissioners the authority to
"establish or acquire museums, and collections of exhibits,

and articles, matters and things to be included in or added to such museums and collections."

The following section, section 16-1164, R.C.M. 1947, deals with tax monies for such museums. It says:

The Board of County Commissioners of any county now owning, or hereafter acquiring any such museum or collection of exhibits, may make an appropriation in its annual budget for upkeep, care, maintenance, operation and support thereof, and to meet and take care of such appropriation may annually levy a tax of not to exceed one (1) mill on each dollar of the taxable valuation of the property subject to taxation in the county, which levy shall be made at the same time as other levies are made for county and school purposes. The proceeds from the collection of such levies shall be kept in a special fund by the County Treasurer and used solely for the purpose for which such levy was made. (Emphasis added.)

Another section dealing with this, section 16-008(a), R.C.M. 1947, gives the Board of County Commissioners the "jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained...museums... ."

Additionally, the 1972 Montana Constitution indirectly forbids state or local governments from entering business with private groups. Article V, section 11(5) says:

No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private industry, private association or private corporation not under the control of the state.

Since a county is a governmental subdivision of the state, this prohibition likewise applies to counties.

Thus, counties and county commissioners have the power to establish museums but they may not appropriate monies for those museums unless the museums are owned directly by the county.

THEREFORE, IT IS MY OPINION:

A non-profit corporation operating a museum or art gallery in the State of Montana is not eligible to receive revenue sharing or county tax funds.

Very truly yours,

MIKE GREELY
Attorney General