

VOLUME NO. 37

OPINION NO. 61

COUNTIES - Permissible use of revenue sharing funds; powers to construct doctors' medical facility; mode of exercise of Industrial Development Project Act powers; inherent powers to prevent destruction of its property; FEDERAL AID - Permissible use of federal revenue sharing funds and payments in lieu of taxes by counties; INDUSTRIAL DEVELOPMENT PROJECTS ACT - Impowerment to construct a doctors' medical facility; mode and manner of financing projects as excluding use of general federal aid to counties; MEDICAL FACILITIES - Counties' and hospital district powers to construct medical facility for doctors and method of financing; PUBLIC HOSPITAL DISTRICT - Power to build or lease doctors' medical facility; REVISED CODES OF MONTANA, 1947, - Sections 11-4101, et seq., 16-1008A, 16-1037, 16-1185, 16-4301, et seq., 71-106; 31 U.S.C.A. §§ 1222-1243; 31 U.S.C.A. § 1601, 43 U.S.C.A. § 1701(13).

- HELD: 1. A county has no authority under sections 16-1008A or 71-106, R.C.M. 1947, to construct a medical facility which would provide office and laboratory space for county doctors. A county does have power under the Industrial Development Projects Act, section 11-4101, et. seq., R.C.M. 1947, to construct such facility using industrial revenue bonds or gifts.
2. A county may not use federal revenue sharing funds or payments in lieu of taxes to construct a medical facility pursuant to the Development Project Acts, section 11-4101, et. seq., R.C.M. 1947.

3. Where a county operated nursing home and a district hospital will close as a result of the failure of the county to construct a doctors' facility, the county has the inherent power to construct the facility using federal revenue sharing funds and payments in lieu of taxes. The power is implied and is incident to a county's inherent power to preserve its property. However, the power arises only when there is no alternative for building the facility and the county can conclusively demonstrate that its hospital or nursing home would have to cease operations.
4. A county may lease a medical building constructed pursuant to the Industrial Development Projects Act to a hospital district which is located within the county.
5. A public hospital district organized pursuant to section 16-4301, et. seq., R.C.M. 1947, may construct a medical building which would provide offices and medical facilities for county doctors, but the county may not distribute federal revenue sharing funds or federal payments in lieu of taxes to the district to finance such construction.

9 September 1977

Charles M. Joslyn, Esq.  
Teton County Attorney  
Teton County Courthouse  
Choteau, Montana 59422

Dear Mr. Joslyn:

You have requested my opinion concerning whether Teton County has authority under section 16-1008A, R.C.M. 1947, or section 71-106, R.C.M. 1947, to construct and lease a medical building which would provide offices and laboratory facilities for the county's two doctors. In subsequent communications with my office you have asked that the scope of your original request be expanded. I have stated your questions as follows:

1. Does Teton County have power under sections 16-1008A or 71-106, R.C.M. 1947, or any other statutory provision, to construct a medical facility which would provide office and

laboratory space for the county's two doctors?

2. If Teton County may construct such medical facility, may it do so utilizing federal revenue sharing funds and federal payments in lieu of taxes?
3. Where a county has only two practicing physicians that may leave the county if the county does not build a medical facility, does the county have additional, implied power to spend federal revenue sharing funds and payments in lieu of taxes to build such a facility?
4. If Teton County may construct a medical facility, may it thereafter lease the facility to the county's public hospital district, which in turn would lease to doctors practicing medicine in the county?
5. May the public hospital district located wholly within Teton County construct a medical facility which would provide office and laboratory space for the county's doctors, and, if so, may the county distribute federal revenue sharing funds and payments in lieu of taxes to the district to finance the construction?

I

Your first question makes specific reference to county powers under sections 16-1008A and 71-106, R.C.M. 1947.

Teton County did not adopt a self-government form of government during the recent local governmental elections which were held pursuant to section 16-5115.10, R.C.M. 1947. The county adopted the traditional form of county commissioner government to which the general county government statutes apply, including sections 16-1008A and 71-106.

Section 16-1008A, R.C.M. 1947, provides in relevant part:

Erection and management of county buildings and other improvements. The board of county commis-

sioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

\* \* \*

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the non-indigent sick, provided such nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act. (Emphasis added.)

Section 71-106, R.C.M. 1947, provides:

Support of poor and indigent persons--tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding thirteen and one-half (13 1/2) mills, which levy shall be made at the time other tax levies are made on property, as provided by law. (Emphasis added.)

Both section 16-1008A and section 71-106 give counties authority to construct "hospitals," the former for county residents generally, and the latter for the indigent sick of the county. I conclude that the proposed facility is not a hospital. The words of a statute are to be interpreted in their every day sense unless a contrary interpretation is indicated in the statute, State v. Ruona, 133 Mont. 243, 248, 321 P.2d 615 (1958); and the term hospital has a general and accepted meaning, being an in-patient institution where sick and injured persons are given medical and surgical care on a twenty-four hour a day basis; a doctors' building is not a hospital, Parker v. Rush, 236 S.W.2d 687, 688, 314 Ky. 609.

I find no language in section 16-1008A, section 71-106, or related provisions which evidences a legislative intention to employ the word "hospital" in any sense other than its plain and ordinarily understood meaning. To the contrary, where the Legislature has enacted legislation concerning medical facilities other than hospitals, it has used explicit language which distinguishes such facilities. E.g., section 69-5201, R.C.M. 1947; section 16-4301.1, R.C.M. 1947. I conclude that a county's powers to build hospitals does not extend to construction of the proposed facility.

Section 16-1008A gives counties additional power to build and maintain "such other public buildings as may be necessary." In Yegen v. Board of County Commissioners, 34 Mont. 79, 89 (1906), the Montana Supreme Court considered the scope of power granted by these words, and concluded that the phrase does not enlarge or expand the classes of purposes for which buildings may be erected. The words "public buildings" mean nothing more or less than buildings which a governmental entity, here the county, is empowered to build or purchase, 36 OP. ATT'Y GEN. NO. 52. A county's power to erect a particular building depends upon whether the building is expressly authorized, such as a hospital and jail, or is incidental and necessary to some duty or power expressly mandated by statute. Arnold v. Custer County, 83 Mont. 130, 269 P. 396 (1928); 28 OP. ATT'Y GEN. NOS. 13 and 42. A doctor's building in an ordinary sense is a private building, and unless the building of such facility is in fulfillment of or incident to the exercise of some specific county power it is not a public building.

An express grant of power to build the proposed doctors' building is found in the Industrial Development Project Act,

section 11-4101, et seq., R.C.M. 1947. Section 11-4102 empowers counties as follows:

General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities or revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and

(4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance. No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

The "projects" which counties are authorized to undertake are set forth separately in section 11-4101, R.C.M. 1947:

Definition of terms. As used in this act, unless the context otherwise requires:

\* \* \*

(2) "Project" means any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises, recreation or tourist facilities, state and federal government facilities, and retirement housing, hospitals, long-term care facilities or medical facilities;

\* \* \*

(Emphasis added.)

Unlike the word "hospital", which counties are also authorized to construct under the Act, "medical facilities" is a broad and general term encompassing a wide variety of facilities related to medical care. The purpose of the Act is to give counties and cities and towns broad powers using industrial revenue bonds to encourage and aid the development of the resources of the State of Montana and to promote the general health, welfare and safety of the state's citizens. Fickes v. Missoula County, 155 Mont. 258, 267-269, 470 P.2d 287 (1970). I conclude that the proposed doctor's building is a "medical facility" within the meaning of the Act.

The mode and manner of undertaking and financing projects under the Industrial Development Projects Act is set forth with particularity in sections 11-4103 through 11-4108, R.C.M. 1947. Here, the county is limited to financing this project through revenue bonds or gifts. It has long been Montana law that where the mode and manner of exercise of a power are provided by statute, that mode and manner is exclusive and must be followed. Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947); and see Smith v. City of Bozeman, 144 Mont. 528, 541, 398 P.2d 462 (1965). Although Article XI, section 4 of the 1972 Montana Constitution provides that the powers of cities and towns and counties shall be liberally construed, requirements of the Industrial Development Projects Act are plain and explicit and there is nothing left to construe. Security Bank & Trust Co. v. Connors, 550 P.2d, 1313, 1317 (1976). The constitutional rule of liberal construction does not give local governments inherent powers. Local governments

without self-government powers must still look to legislative grants of powers. The rule has applicability only to those situations where the grant of powers, denial of power, or other legislation applicable to local governments is ambiguous. If ambiguity exists then the constitutional provision requires that all doubts must be resolved in favor of the local government. In the present question, the statute is clear and precise. A county must therefore comply with the requirement that the Board of County Commissioners, after notice and hearing, find the project to be in the "public interest," section 11-4103(5), R.C.M. 1947; and is limited to financing the project with industrial revenue bonds or gifts, section 11-4102(1) and (3), R.C.M. 1947.

## II

Your second question concerns the use of federal revenue sharing funds and federal payments in lieu of taxes to finance the proposed project.

Section 16-1185, R.C.M. 1947, permits county commissioners to expend federal funds, including federal revenue sharing funds, "according to federal requirements."

Federal revenue sharing funds are distributed to units of local government on the basis of a specific mathematical formula. 31 U.S.C.A. §§ 1225 and 1226. Prior to January 1, 1977, expenditures of such funds by units of local government were limited to priority matters, 31 U.S.C.A. §§ 1222, 1223, and 1243(a)(3); but that requirement was repealed as of January 1, 1977, by Pub. L. 94-488, 90 Stat. 234.

Federal payments in lieu of taxes are similar to revenue sharing funds in that they are grants specifically appropriated by Congress to aid local governments. The grants are appropriated by 31 U.S.C.A. § 1601, et seq., and are based upon the amount of federal entitlement-land located within the beneficiary unit of local government and upon population. 31 U.S.C.A. § 1602. The legislative history of the appropriation, particularly the Senate Report, makes clear that the purpose of these grants is to alleviate, in part, financial hardship caused local governments as the result of federal ownership of local lands and the immunity of such lands from state and local taxation. 1976 U.S. Code Cong. and Adm. News, pp. 5968-5978. The grants are the implementation of the statement of purpose found in 43 U.S.C.A. § 1701(13), which states:



The federal government should, on a basis equitable to both the federal and local taxpayer, provide for payments to compensate state and local governments for burdens created as a result of the immunity of federal lands from state and local taxation.

31 U.S.C.A § 1601 provides that such grants may be used by local governments "for any governmental purpose." For purposes of this opinion I am assuming that "governmental purpose" means that the expenditure must be within the power of the governmental unit which makes it.

The lack of a federal restriction on the expenditure of the funds in question indicates Congressional intention that the funds be expended in accordance with state spending requirements. See Wheeler v. Barrera, 417 U.S. 402, 416-417 (1974). Section 16-1185 and the federal statutes in question here do not give local governments additional spending powers. The manner in which these funds may be expended is therefore controlled by state laws concerning the powers of local governments.

I have already concluded that the county has power to build the proposed doctors' building under the provisions of the Industrial Development Projects Act, but is limited to the mode and manner of financing which is prescribed by the Act. Supra, p. 4-5; See Thompson v. Gallatin County, supra; and Smith v. City of Bozeman, supra. It is apparent the Legislature intended to preclude the use of general county funds for projects of this nature.

Cities, towns and counties are expressly prohibited from pledging their general credit and taxing power to finance industrial development projects. Section 11-4103(1), R.C.M. 1947. The general fund is thus conserved for other, more general public purposes. While industrial revenue projects serve public purposes, Fickes v. Missoula County, supra, 155 Mont. at 264; the benefits are indirect, obtained by facilitating the continued operation, expansion, or immigration of private enterprise in the locality. These private businesses in turn provide jobs and services in the community. The method of financing specified in the Act reflects a legislative policy that benefitted businesses pay for the benefits. The projects are to be undertaken without burdening the local taxpayers or charging local funds available for other public purposes. Federal revenue sharing funds

and payments in lieu of taxes may be spent for any purpose for which the local government may spend or pledge general tax revenues. See Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974). Expenditures of the funds for purposes which taxes and the general credit of the locality may be used permits either a reduction of taxes or the additional expenditures of money which would otherwise require a tax increase or pledge of additional local credit. Any expenditure of federal revenue sharing funds and payments in lieu of taxes therefore has an indirect impact upon taxes and the general credit and taxing powers of the county. Spending these federal funds for industrial development projects violates the obvious intent and purpose of the prescribed manner of financing such projects.

Section 11-4102(1) gives local government powers to use "gifts" for projects constructed pursuant to the Act, but federal grants are not gifts. The word "gift" means the giving of something of value by one party to another without compensation or other consideration in return. It is axiomatic that government expenditures, whether federal or state, must be for some governmental or public purpose. E.g., Helvering v. Davis, 301 U.S. 619, 640 (1937); Fickes v. Missoula County, supra, 155 Mont. at 266-270. We cannot assume that funds appropriated by Congress are gratuities or gifts. McLean v. United States, 226 U.S. 374, 380 (1912). To the contrary, in the case of governmental grants, the benefit to the government is the public purpose served by the expenditure of the funds, which is in the nature of consideration. Alameda County v. Carleson, 97 Cal. Rptr. 385, 396, 488 P.2d 953. Government grants are commonly understood to fall within a class separate and apart from gifts. In view of the Legislature's intent to preserve the general fund for general tax funded purposes, it would be inconsistent to interpret the word "gifts" to include federal funds.

I therefore conclude that neither federal revenue sharing funds nor payments in lieu of taxes may be used to finance industrial development projects.

### III

In your request for an opinion, you stated that Teton County presently has only two physicians. These physicians lack adequate medical facilities and may leave the county if the proposed doctor's building is not built. You have further pointed out in your request and subsequent communications

with my office that the county's only public hospital, which is operated by a public hospital district, and the county operated nursing home, will have to be closed if the county is left without doctors. You have asked whether these facts give the county additional, implied powers which would permit the use of federal revenue sharing funds and payments in lieu of taxes, to construct the doctors' building.

Furnishing doctors with office space and laboratory facilities is not ordinarily necessary to the maintenance of a hospital or nursing home. However, local governmental units do have inherent authority to protect and preserve their property and are not constrained to stand by helplessly while valuable property is destroyed. Arnold v. Custer County, supra, 83 Mont. at 146-147.

If the hospital will cease operations because a doctors' building is not constructed, the hospital district has implied power to construct the facility for the purpose of preserving the hospital. The county has similar power to preserve a nursing home operated by it pursuant to section 16-1037, R.C.M. 1947. However, the nature of the power is one of absolute necessity - it arises only when express and implied powers conferred by statute have been exhausted and the facility or institution cannot otherwise be preserved. To sustain such power the county carries a difficult if not insurmountable burden. First, it would have to show that other sources of financing the facility are unavailable and that the county's doctors are unwilling to do so. In particular, it would have to show that revenue bond financing under the Industrial Revenue Bond Act is not merely impractical or economically unattractive, but is unavailable and impossible. Second, it would need to demonstrate that if the facility is not built the doctors will leave the county and that no other doctors can be found to replace them.

If such showing can be made, which is unlikely, then the county may use federal revenue sharing bonds and payments in lieu of taxes to finance the project.

#### IV

Your fourth question is whether the county may lease the proposed doctors' building, if built, to the hospital district. The district would in turn manage the facility and lease it to the county's doctors. I understand that the proposed building will be adjacent to the new hospital.

The Act contemplates leasing as an integral part of its execution, explicitly authorizing leases to "others." Section 11-4102(2), R.C.M. 1947. The Act sets forth specific provisions and requirements for all leases.

The Hospital District also has the authority to enter into leases. The powers granted hospital districts in administering hospitals is expressly broad. Section 16-4308, R.C.M. 1947, provides in relevant part:

Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities and its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

\* \* \*

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift.

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same.

\* \* \*

The powers of districts extend to "hospital facilities," a word which indicates that the Legislature contemplated a broader class of places than the "in-patient" institutions which the word "hospital" signifies when used alone. "Hospital facilities" is defined in section 16-4301.1, R.C.M. 1947:

"Hospital facilities" defined. As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

The examples are not exhaustive, as indicated by the use of the word "including." It is my opinion that a medical building adjacent to the hospital, which would provide office space and laboratory facilities for the only two

doctors serving the hospital, is a "hospital related facility," which districts are authorized to lease. Use of the words "convenient" and "expedient" in the general plan of power under section 16-4308 is broad and flexible language further confirming this holding. The further words "without limitation on the foregoing general grant of powers" indicate that the enumerated, explicit powers are not inclusive and that facilities which are convenient to the administration of the hospital may be leased.

## V

Based on the reasoning in Part IV of this opinion, I also conclude that a hospital district has the power to construct a doctors' building on property near the hospital. However, there is no authority for the use of either revenue sharing funds or federal payments in lieu of taxes to build such facility. Neither form of federal aid is granted directly to hospital districts. Although districts are created by the county commissioners, section 16-4306, R.C.M. 1947, districts are distinct units of government. They are governed by separate boards of elected trustees and have enumerated governmental powers separate from those of the counties. See sections 16-4308, 4309, 4309.1, 4309.2, and 4310, R.C.M. 1947. Use of federal funds would therefore require a transfer of such funds from the county to the hospital district. A county has only such power as is expressly conferred upon it by statute and such as is necessarily implied in the exercise of authority so conferred. Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1945); State ex rel Bowler v. County Commissioners, 106 Mont. 251, 257, 76 P.2d 648 (1938); and I find no statute which expressly or impliedly allows such transfer.

THEREFORE, IT IS MY OPINION:

1. A county has no authority under sections 16-1008A or 71-106, R.C.M. 1947, to construct a medical facility which would provide office and laboratory space for county doctors. A county does have power under the Industrial Development Projects Act, section 11-4101, et. seq., R.C.M. 1947, to construct such facility using industrial revenue bonds or gifts.
2. A county may not use federal revenue sharing funds or payments in lieu of taxes to construct a

medical facility pursuant to the Development Project Acts, section 11-4101, et. seq., R.C.M. 1947.

3. Where a county operated nursing home and a district hospital will close as a result of the failure of the county to construct a doctors' facility, the county has the inherent power to construct the facility using federal revenue sharing funds and payments in lieu of taxes. The power is implied and is incident to a county's inherent power to preserve its property. However, the power arises only when there is no alternative for building the facility and the county can conclusively demonstrate that its hospital or nursing home would have to cease operations.
4. A county may lease a medical building constructed pursuant to the Industrial Development Projects Act to a hospital district which is located within the county.
5. A public hospital district organized pursuant to section 16-4301, et. seq., R.C.M. 1947, may construct a medical building which would provide offices and medical facilities for county doctors, but the county may not distribute federal revenue sharing funds or federal payments in lieu of taxes to the district to finance such construction.

Very truly yours,

MIKE GREELY  
Attorney General