

VOLUME NO. 38

OPINION NO. 14

COUNTIES - Authority to borrow directly from a financial institution;
COUNTY COMMISSIONERS - Authority to borrow directly from a financial institution;
COUNTY GOVERNMENT - Authority to borrow directly from a financial institution;
COUNTY OFFICERS AND EMPLOYEES - Authority to borrow directly from a financial institution;
LOCAL GOVERNMENT - Authority to borrow directly from a financial institution;
MUNICIPAL CORPORATIONS - Authority to borrow directly from a financial institution;
MUNICIPAL GOVERNMENT - Authority to borrow directly from a financial institution;
PUBLIC OFFICERS - Authority to borrow directly from a financial institution;
MONTANA CODE ANNOTATED - Sections 7-1-106, 7-1-114, 7-5-4101, 7-7-2101, 7-7-2102, 7-7-2402, 7-7-2402(2), 7-7-4202;
REVISED CODES OF MONTANA - Sections 11-901, 11-966, 16-807, 16-2301, 16-2305, 47A-7-106, 47A-7-204;
OPINIONS OF THE ATTORNEY GENERALS - 37 Op. Att'y Gen. No. 68 (1977), 37 Op. Att'y Gen. No. 70 (1977), 37 Op. Att'y Gen. No. 152 (1978).

- HELD:
1. A county with general government or self-government powers can incur indebtedness by borrowing money directly from a financial institution.
 2. A city or town with general government or self-governing powers can incur indebtedness by borrowing money directly from a financial institution.

22 March 1979

Harold A. Fryslie, Director
Montana Department of
Community Affairs
1424 Ninth Avenue
Helena, Montana 59601

Dear Mr. Fryslie:

You have requested my opinion on the following questions:

1. Can a county with general government or self-government powers incur indebtedness by borrowing directly from a financial institution?
2. May a city or town with general government or self-government powers incur indebtedness by borrowing directly from a financial institution?

Under the terms of section 7-1-114, MCA (section 47A-7-204, R.C.M. 1947), a local government with self-government powers is subject to state law with regard to matters of the budget, finance and borrowing. 37 Op. Att'y Gen. No. 152 (1978); 37 Op. Att'y. Gen. No. 68 (1977). A local government with general powers has such powers as are provided or implied by law. Mont. Const., art. XI, § 4. Therefore both general government and self-government local governmental units are controlled by and have such power and authority as is set forth in statutes dealing with local government budget and finance.

However, the powers of both general government and self-government local governmental units are required to be liberally construed. Mont. Const., art. §4; § 7-1-106, MCA (§ 47A-7-106, R.C.M. 1947). The rule of strict construction with regard to local governmental powers is no longer applicable. 37 Op. Att'y. Gen. No. 70 (1977). Compare Leishner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959).

Cities and towns have express authority to borrow:

The City or Town Council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes...." (Emphasis added.)

§ 7-7-4202, MCA (§ 11-966, R.C.M. 1947).

Where the language is unambiguous the statute speaks for itself and there is nothing to construe. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). Matter of Bier's Estate, _____ Mont. _____, 567 P.2d 943 (1973). The plain meaning of the statute is that the city or town can borrow money directly or create an indebtedness by issuing bonds. Although there is no statutory procedure for implementing this power to borrow directly, cities and towns are vested with authority to give effect to powers expressly granted. § 7-5-4101, MCA (§ 11-901, R.C.M. 1947).

Even under the former rules of strict construction, local government had the implied power to implement an express grant of authority when the mode in which the express grant was to be exercised was not prescribed by statute. Franzke v. Fergus County, et al., 76 Mont. 150, 245 P. 962 (1926); Dietrich, et al. v. City of Great Falls, 157 Mont. 376, 485 P.2d 932 (1971). Add to this the statutory authority of cities and towns to implement express powers and the liberal construction required by the 1972 Constitution and there can be no doubt that cities and towns have the authority to borrow directly from financial institutions.

The power of counties to borrow is not as clear. Section 7-7-2402, MCA (section 16-2301, R.C.M. 1947), provides that the county commissioners must not borrow money in excess of \$10,000 without approval of a majority of the electors. If the voters approve the loan then "the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county." (Emphasis Added.) a§ 7-7-2402(2), MCA (§ 16-2305, R.C.M. 1947). Under the strict construction rule an argument could have been made that the only mode authorized by statute for implementing these powers was to follow the bonding statutes. Dietrich, supra. However, section 7-7-2402(2), MCA, provides that a county can make a loan by issuing bonds "or otherwise". I must presume the Legislature does not do useless acts. Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). The statute includes the phrase "or otherwise, as may seem best for the interests of the county." It gave counties a means of borrowing other than issuing bonds. Since section 7-1-106 requires liberal construction of county powers the reasonable conclusion is that the phrase includes the power to borrow directly from a financial institution.

Of course, this authority to borrow does not change the debt limitations of local governments. See § 37-7-2101; § 7-7-2102, MCA (§ 16-807, R.C.M. 1947); § 7-7-4202, MCA (§ 11-966, R.C.M. 1947).

THEREFORE, IT IS MY OPINION:

1. A county with general government or self-government powers can incur indebtedness by borrowing money directly from a financial institution.
2. A city or town with general government or self-government powers can incur indebtedness by borrowing money directly from a financial institution.

Very truly yours,

MIKE GREELY
Attorney General