

VOLUME NO. 38

OPINION NO. 32

BATTERED SPOUSES AND DOMESTIC VIOLENCE GRANT PROGRAM - Administration, collection of fees;
CLERK OF THE DISTRICT COURT - Marriage license fees;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Administration of battered spouses and domestic violence grant program;
MARRIAGE LICENSE - Fee increase - disposition of fee;
MONTANA CODE ANNOTATED - Sections 25-1-201, 40-1-202, chapter 677;
1979 MONTANA LAWS - Chapter 677.

- HELD: 1. In 1979 Montana Laws, chapter 677, section 2, the phrase "county costs of administration" refers only to the processing of marriage licenses and not to the administration of the battered spouses and domestic violence grant program.
2. The term "general fund" as it appears in 1979 Montana Laws, chapter 677, refers to the state general fund.
3. Only sixteen dollars of the twenty-five dollar marriage license fee is subject to the provisions of section 25-1-201(2), MCA.
4. The sixteen dollars must be deposited as follows: (1) \$9.60 remitted directly to the State, and (2) \$6.40 in the county general fund.

9 August 1979

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You asked for my opinion on the following questions concerning 1979 Montana Laws, chapter 677:

1. Does the phrase "county costs of administration" in section 2 refer to the processing of marriage licenses or to the administration of the battered spouses and domestic violence grant program?

2. Does the term "general fund" in section 2 refer to the state general fund or to the county general fund?
3. What portion, if any, of the twenty-five dollar fee provided for in section 6 is subject to the provisions of section 25-1-201(2), MCA?
4. How is the marriage license fee to be deposited?

Chapter 677, 1979 Montana Laws, was enacted during the past legislative session to provide a battered spouses and domestic violence grant program administered by the Department of Social and Rehabilitation Services. The legislative history of House Bill 868, subsequently passed as chapter 677, indicates that the Legislature intended to establish a self-sufficient program for assistance to victims of domestic violence. Chapter 677, section 2(1) provides:

FUNDING. (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. Sixteen dollars of the marriage license fee is to be retained by the county in which the fee is collected to defray the county costs of administration and \$9 of the marriage license fee is to be deposited in the general fund.

The title and text of the law state clearly that the program is to be administered by the State Department of Social and Rehabilitation Services. Since the county does not administer the battered spouses and domestic violence grant program, "county costs of administration" refers only to the costs of processing marriage licenses.

Section 7, of chapter 677 appropriates \$72,000 to the Department of Social and Rehabilitation Services. The committee minutes show that the appropriation was based on an average of 8,000 marriage licenses per year at a surcharge of nine dollars per license. Nine dollars must be deposited in the state general fund to insure that the program is entirely funded by the surcharge. Consequently, the term "general fund" in section 2(1) refers to the state general fund.

Currently section 25-1-201, MCA, provides a plan by which fees collected by the county are apportioned and distributed

to the state and county. Section 25-1-201(2), MCA, provides:

(2) Forty percent of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

Your third question concerns how much of the marriage license fee must be distributed pursuant to that section. Section 25-1-201(1)(m), MCA, provides for a marriage license fee of fifteen dollars. While chapter 677 did not amend that section, it did amend section 40-1-202, MCA, to provide for a marriage license fee of twenty-five dollars. Thus the two provisions now conflict.

When interpreting legislation, the intention of the Legislature is to be pursued if possible. State ex rel. Krona v. Holmes, 114 Mont. 372, 376, 163 P.2d 22 (1943). Acts relating to the same subject should be construed together in order to give effect to all if possible. Belote v. Bakken, 139 Mont. 43, 46, 359 P.2d 372 (1961). Where a more recent statute conflicts with an earlier one, the conflicting provisions of the earlier statute are repealed. State v. Mangan, 151 Mont. 558, 564, 445 P.2d 565 (1968). In light of the above rules of construction, there is only one possible construction of sections 40-1-202 and 25-1-201. The provision in chapter 667, section 6, which amended section 40-1-202, MCA, by raising the fee from fifteen dollars to twenty five dollars is not wholly subject to the provisions of section 25-1-201(2), MCA. As the legislative history indicates, nine dollars must be sent directly to the state general fund and is exempt from the provisions of section 25-1-201(2), MCA. This leaves sixteen dollars which is subject to the provisions of 25-1-201(2), MCA.

Under the provisions of section 25-1-201(2), MCA, the sixteen dollars is divided into two portions as follows:

1. Forty percent (\$6.40) deposited in and credited to the county general fund.
2. Sixty percent (\$9.60) is remitted to the State for deposit as provided in section 19-5-404, MCA.

THEREFORE, IT IS MY OPINION:

1. In 1979 Montana Laws, chapter 677, section 2, the phrase "county costs of administration" refers only to the processing of marriage licenses and not to the administration of the battered spouses and domestic violence grant program.
2. The term "general fund" as it appears in 1979 Montana Laws, chapter 677, refers to the state general fund.
3. Only sixteen dollars of the twenty-five dollar marriage license fee is subject to the provisions of section 25-1-201(2), MCA.
4. The sixteen dollars must be deposited as follows: (1) \$9.60 remitted directly to the State, and (2) \$6.40 in the county general fund.

Very truly yours,

MIKE GREELY
Attorney General