

VOLUME NO. 38

OPINION NO. 44

CITIES AND TOWNS, MUNICIPAL CORPORATIONS - Temporary authority to exceed statutory mill levy limits in successive years;

CITIES AND TOWNS, MUNICIPAL CORPORATIONS - Application of section 15-7-122, MCA, to taxes improperly collected in prior year;

MONTANA CODE ANNOTATED - Sections 7-6-4451, 7-32-4117(2), 7-33-4130(2), 15-7-122, 19-10-301;

REVISED CODES OF MONTANA - Sections 11-1024.2, 11-1024.4, 11-1823, 84-310, 84-4701.1.

- HELD:
1. Section 15-7-122, MCA, allows a municipality to levy a number of mills sufficient to fund a general fund budget equal to 105 percent of the preceding year's budget, statutory mill levy limitations notwithstanding.
  2. The authority granted in section 15-7-122, MCA, may be exercised in successive years if the statutory requirement is met.
  3. Budget items funded by illegally levied taxes may not be considered when computing the 105% figure.

10 October 1979

Robert L. Knopp, Esq.  
Lewistown City Attorney  
312 Fourth Avenue South  
Lewistown, Montana 59457

Dear Mr. Knopp:

You have asked for my opinion concerning:

1. Do the provisions of section 15-7-122, MCA, allow the levying of a mill levy sufficient to fund a general fund budget for the 1979-80 fiscal year equivalent to 105 percent of the city's general fund budget for fiscal year 1978-79?
2. Can the authority of section 15-7-122, MCA, be utilized by the city on an annual basis?

3. Does the increased percentage apply to additional mills levied under the provisions of sections 7-32-4117(2), 7-33-4130(2), 19-10-301, MCA?

Your first question deals with whether section 15-7-122, MCA, allows a municipality which has suffered decreased property values to levy a sufficient millage to raise a sum equivalent to 105 percent of the previous year's budget. In my opinion it does. That section provides:

TEMPORARY AUTHORITY TO EXCEED MILL LEVY LIMITATIONS. Taxing jurisdictions may adopt and levy for a budget equal to 105 percent of the preceding year's 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 percent of the preceding year's budget.

It is clear that the Legislature was aware of the type of problems which might be caused by a sudden drop in property values within a taxing jurisdiction. Section 15-7-122, MCA, was enacted to allow the municipality to maintain necessary services in spite of a decrease in taxable valuation.

Your second question concerns whether the authority granted in section 15-7-122, MCA, may be exercised in successive years. The question arises from the use of the phrase "temporary authority" in the catchline of the statute. The particular meaning to be given to a word in any given instance must be determined from the context and general purpose of the provision in which it is found. Ex parte Lockhart, 72 Mont. 136, 232 P. 183 (1924). In this context, the word "temporary" may be defined as "that period of time in which the statutory mill limitations will not raise an amount equal to 105 percent of the previous fiscal year's budget based upon current taxable valuations." Applying this definition, it is my opinion that the authority of section 15-7-122, MCA, may be relied on to levy a sufficient millage to raise a sum equivalent to 105 percent of the previous year's budget, even in successive years, if a decrease or insufficient increase in taxable valuation prevents the municipality from budgeting a 5 percent increase under statutory mill levy limitations.

Your third question deals with the interaction between the temporary budget authority and the special mill levies authorized by sections 19-10-301, 7-33-4130(2), and 7-32-4117(2), MCA. A prior Attorney General's opinion has held that these special mill levies must be included within the 65 mill all purpose levy provided in section 7-6-4451, MCA, in those municipalities which elect to tax under that statute. 36 Op. Att'y Gen. No. 94 (1976). I have reviewed that opinion and find its reasoning sound. To the extent that the special mill levies may have been assessed in addition to the 65 mill levy, they represent taxes improperly levied. It is my opinion that such improperly levied taxes may not be included in the base figure used to compute the allowable levy under section 15-7-122, MCA. For example, assume a municipality levied the maximum 65 mill all-purpose levy to raise \$1,000,000. Assume further that the municipality improperly levied additional mills for the purposes described in sections 19-10-301, 7-33-4130(2) and 7-32-4117(2), MCA, to raise \$100,000, thereby creating a total sum of \$1,100,000 which was available to the municipality during the previous year. The 105 percent factor may be applied only to the \$1,000,000 which was properly collected. The maximum monies authorized by section 15-7-122, MCA, for collection in the second year would total \$1,050,000. Any other construction would be equivalent to an ex post facto sanction of the illegal taxation. The 105 percent figure applies only to that portion of the budget which was properly levied.

For your reference I have enclosed copies of the two Attorney General opinions cited above.

THEREFORE, IT IS MY OPINION:

1. Section 15-7-122, MCA, allows a municipality to levy a number of mills sufficient to fund a general fund budget equal to 105 percent of the preceding year's budget, statutory mill levy limitations notwithstanding.
2. The authority granted in section 15-7-122, MCA, may be exercised in successive years if the statutory requirement is met.

3. Budget items funded by illegally levied taxes may not be considered when computing the 105 percent figure.

Very truly yours,

MIKE GREELY  
Attorney General