

VOLUME NO. 38

OPINION NO. 52

CLERK OF DISTRICT COURT - Disposition of fees collected by clerk of district court in counties adopting a six-mill district court levy;

COURTS, DISTRICT - Use of general fund revenues to supplement six-mill district court levy;

MONTANA CODE ANNOTATED - Sections 3-5-515, 25-1-201.

HELD: 1. Fees collected by clerks of the district courts do not accrue as a revenue item to the district court fund in those counties adopting a six-mill district court levy.

2. The board of county commissioners may supplement the six-mill levy with general fund revenues in financing the district court.

2 November 1979

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

In counties which assess a six-mill levy under chapter 692, 1979 Montana Laws, do fees collected by the clerk of the district court accrue as a revenue item to the district court fund or to the general fund?

Chapter 692, 1979 Montana Laws, authorizes counties to establish a district court fund and, in the case of first and second class counties, to levy up to six mills for the fund. Your question is whether the fees collected by district court clerks should also be credited to the fund. In my opinion they should not. Section 25-1-201, MCA, sets forth the various fees collected by the clerk of the district court, with the exception of the fee for naturalization; see § 3-5-515, MCA. Section 25-1-201(2), MCA, requires the clerk to deposit forty percent of the fees set forth in that section in the general fund, and to remit sixty percent of the fees to the State. Section 3-5-515, MCA, requires all naturalization fees to be deposited in the general fund. Chapter 692 does not alter the clear mandate of these statutes.

You should be aware, however, that the district court fund may contain funds raised from sources other than the six-mill levy. In 38 Op. Att'y Gen. No. 31, I held that the six-mill levy could be supplemented by general fund appropriations. Thus, the commissioners could appropriate the district court fees to the district court fund if they saw fit to do so.

THEREFORE, IT IS MY OPINION:

1. Fees collected by clerks of the district courts do not accrue as a revenue item to the district court fund in those counties adopting a six-mill district court levy.
2. The board of county commissioners may supplement the six-mill levy with general fund revenues in financing the district court fund.

Very truly yours,

MIKE GREELY
Attorney General