

VOLUME NO. 38

OPINION NO. 72

TAXATION AND REVENUE - Allocation of proceeds of Montana Coal Severance Tax;

COAL - Montana Coal Severance Tax, allocation of proceeds;

MONTANA CODE ANNOTATED - Sections 15-35-104 and 15-35-108;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 73

- HELD: 1. The allocation of coal severance tax proceeds to the educational trust fund for coal mined in the quarter ending June 30, 1979, should be 26½ percent.
2. The coal area highway improvement account should receive 13 percent of the revenue received from taxes assessed on coal mined during the quarter ending June 30, 1979.
3. The proceeds of the severance tax allocated to the state library commission must be taken from taxes assessed on coal mined after June 30, 1979.

12 March 1980

Mary Craig, Director
Department of Revenue
S. W. Mitchell Building
Helena, Montana 59601

Dear Ms. Craig:

You have requested an opinion regarding the allocation of the proceeds of the Montana Coal Severance Tax pursuant to the provisions of section 15-35-108, MCA.

The tax is assessed on a quarter year basis, and applies to all coal mined during the quarter. However, the actual payment of the tax is not due until thirty (30) days following the end of the quarter. § 15-35-104, MCA. The confusion has arisen because payments are received in one fiscal year for coal mined during the last quarter of the previous fiscal year.

Your questions can be answered with reference to 37 Op. Att'y Gen. No. 73. While that opinion did not answer the specific questions presented here, it did determine the Legislature's intent regarding the use of the word "collections" in the allocation formula. The opinion found that as

used in this statute, the term "collections" was intended to apply to revenue assessed on coal mined after the beginning of the fiscal year and not on all revenues received during the fiscal year. There is nothing in the subsequent amendments to section 15-35-108, MCA, that causes me to alter the prior opinion.

Your first question is whether, under the provisions of section 15-35-108(2)(c), MCA, the allocation to the educational trust fund for the quarter ending June 30, 1979 should be 26½ percent or 37½ percent of the amount disbursed. Section 15-35-108, MCA, provides in pertinent part:

DISPOSAL OF SEVERANCE TAXES. Severance taxes collected under the provisions of this chapter are allocated as follows:

* * *

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

* * *

(c) 26½ percent until July 1, 1979 and thereafter 37½ percent to the earmarked revenue fund to the credit of the local impact and education trust fund account;

Under the reasoning of 37 OP. ATT'Y GEN. NO. 73 the 26½ percent allocation applies to revenue from coal mined before July 1, 1979 and the 37½ percent allocation applies to revenue from coal mined after July 1, 1979.

Your second question is whether the coal area highway improvement account should receive 13 percent of the tax collected for the quarter ending June 30, 1979. Again section 15-35-108, MCA, provides in relevant part:

DISPOSAL OF SEVERANCE TAXES. Severance taxes collected under the provisions of this chapter are allocated as follows:

* * *

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance;

* * *

(d) For each of the two school years following June 30, 1977, 13 percent to the earmarked revenue fund, to the credit of the coal area highway improvement account;

The coal area highway improvement account should receive 13 percent of the proceeds of the tax on coal mined in the two fiscal years following June 30, 1977. Thus, the coal area highway improvement account should receive 13 percent of the tax collected on coal mined in the quarter ending June 30, 1979.

Your final question is whether the Legislature intended to reduce the coal severance tax allocation to the general fund for the quarter ending June 30, 1979 by the enactment of chapter 694, 1979 Montana Laws. Chapter 694 amended the statute by adding a new provision providing that one percent of the remaining proceeds be given to the state library commission for the purpose of providing library services. § 15-35-108(2)(i), MCA.

Section 3 of chapter 694, provided:

EFFECTIVE AND APPLICABILITY DATES. This act is effective upon passage and approval and applies to all coal severance tax collections after June 30, 1979.

The act was signed by the Governor on May 11, 1979. The confusion again arises from the Legislature's use of the term collections in section 3. Did the Legislature intend that the allocations to the state library commission be made from revenues received by the Department after June 30, 1979 but taken from taxes on coal mined during the quarter ending June 30, 1979, or does the section apply only to revenue received on coal mined after June 30, 1979?

It is a fundamental rule of statutory construction that legislative intent must be ascertained from the statute taken as a whole, not just the wording of one particular section. Vita Rich Dairy Inc. v. Department of Business Regulation, 170 Mont. 341, 533 P.2d 980 (1976); Teamsters Local No. 45 v. Cascade County School District, 162 Mont. 277, 511 P.2d 339 (1973). As noted above, the Legislature's intent regarding the use of the word "collections" in the other provisions of section 15-35-108, MCA, was determined in 37 Op. Att'y Gen. No. 73. Statutory construction should not lead to contrary results if reasonable construction will

avoid it. State ex rel Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 348 P.2d 797 (1960). Presumably, the Legislature was aware of the construction given in the prior Attorney General's opinion before the 1979 amendments. It has been held that the Legislature's failure to change terms of a statute following an Attorney General's opinion signifies acquiescence in the opinion's holding. See Teamsters Local No. 45 v. Cascade County School District, supra. The use of the term "collections" in section 3 of chapter 694 does not indicate the Legislature intended to alter the construction of the provisions of the statute. The proceeds of the coal severance tax allocated to the state library commission in section 15-35-108(2)(i), MCA, must be taken from taxes on coal mined after June 30, 1979.

THEREFORE, IT IS MY OPINION:

1. The allocation of coal severance tax proceeds to the educational trust fund for coal mined in the quarter ending June 30, 1979, should be 26½ percent.
2. The coal area highway improvement account should receive 13 percent of the revenue received from taxes assessed on coal mined during the quarter ending June 30, 1979.
3. The proceeds of the severance tax allocated to the state library commission must be taken from taxes assessed on coal mined after June 30, 1979.

Very truly yours,

MIKE GREELY
Attorney General