VOLUME NO. 39 OPINION NO. 25

APPROPRIATIONS - Control of expenditures;
APPROPRIATIONS - Conflicts with substantive; statutory provisions;
APPROPRIATIONS - Repeal by implication not favored;
COUNTIES - Eligibility for financial assistance for district court expenses;
DEPARTMENT OF ADMINISTRATION - Duty to provide financial assistance to counties for district court expenses;
DISTRICT COURTS - Eligibility for financial assistance from Department of Administration;
LEGISLATIVE BILLS - Title to clearly express subject;
LEGISLATURE - Control of expenditures through appropriations bills;
LEGISLATURE - Restrictions in appropriation bills;
LEGISLATURE - Conflict with substantive statutes;
MONTANA CODE ANNOTATED - Section 7-6-2352;
MONTANA CONSTITUTION - Article V, section 11.

HELD: The Department of Administration should follow the provisions of section 7-6-2352, MCA, in providing financial assistance to counties for district court expenses.

14 July 1981

Morris L. Brusett, Director
Department of Administration
Sam W. Mitchell Building
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion as to the Department of Administration's responsibility to make financial assistance grants to counties for district court costs pursuant to section 7-6-2352, MCA.

Section 7-6-2352, MCA, was amended by the 47th Legislature through the passage of Senate Bill 300, which has been designated Chapter 465, Laws of Montana, 1981. Chapter 465 had an effective date of July 1 of this year. The statute requires the Department of Administration to make financial assistance grants to counties for the operation of the district courts. Section 7-6-2352(1), MCA, now provides:

> State grants to district courts. (1) The department of administration shall make grants to the governing body of a county for the district courts for assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose. If the department of administration approves grants in excess of the amount appropriated, each grant shall be reduced an equal percentage so the appropriation will not be exceeded.

Formerly the section allowed the Department, on a discretionary basis, to award grants only for emergency assistance. The amendments this year require the Department to provide assistance on a broader basis.

Subsection (2) of section 7-6-2352, MCA, as amended by chapter 465, specifically establishes the criteria for financial assistance grants:

> (2) The governing body of a county may apply to the department of administration for a grant by filing a written report by July 31, for the previous fiscal year stating that the

following conditions have occurred or will occur:

(a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget, because of expenses exceeding the sum derived from the mill levy provided for in 7-6-2511 arising from litigation in either civil or criminal matters, not including building, capital, and library maintenance, replacement, and acquisition, but including the costs associated with:

(i) the impaneling and maintenance of juries;

(ii) the appearance of witnesses;

(iii) the fees and litigation related expenses of attorneys appointed by a district court;

(iv) transcripts prepared at the direction of a district court at county expense;

(v) salaries and fees of court reporters;

(vi) psychological and medical treatment or evaluations ordered by a district court at county expense;

(vii) the actual and necessary expenses of travel as limited by law for:

(a) jurors;

(b) witnesses;

(c) court reporters;

(d) defendants in criminal cases who are in custody;

(e) juveniles under the supervision of a district court; or

(f) law enforcement or probation officers acting in furtherance of a district court order; and

(viii) other, similar expenses created by and required for the conduct of and preparation for a trial in district court;

(b) that all expenditures from the district court fund have been lawfully made;

(c) that no transfers from the district court fund have been or will be made to any other fund;

(d) that no expenditures have been made from the district court fund that are not

> specifically authorized by 7-6-2511 and 7-6-2351; and
>
> (e) any other information required by the department of administration.

It is clear that the Legislature intended financial assistance grants under section 7-6-2352, MCA, to be made for the purpose of offsetting virtually all excess costs associated with the operation of a district court except those for building, capital, and library maintenance, replacement, and acquisition.

The problem is that subsection (1) of section 7-6-2352, MCA, requires the financial assistance grants to be made from funds appropriated to the Department of Administration for that purpose. The 47th Legislature did appropriate funds to the Department for that purpose in the general appropriation bill for state agencies, House Bill 500 (see page 25, lines 23-25 thereof). However, restrictive language on the use of the funds was also added by the Legislature in House Bill 500 which conflicts with the clear intent of section 7-6-2352, MCA, as amended. The restrictive language is found in House Bill 500 on page 28 at lines 16-24. It provides:

> Item 9 provides for emergency funding of the district courts in those instances when a court incurs extraordinary expenses due to an extended criminal case or state government related suits in Lewis and Clark county. These funds shall not be used for usual court operations or additional social service programs.
>
> Emergency funds to Lewis and Clark county for state government related suits will not exceed 10% above the revenue collected through the 6 mill levy.

The restrictions limit the appropriation to emergency funding and only when extraordinary expenses are incurred. The restriction thus expressly conflicts with the provisions of section 7-6-2352, MCA, as amended by chapter 465. It is my opinion that the Department should follow the provisions in section 7-6-2352, MCA.

The Courts have considered such restrictions with disfavor. In City of Helena v. Omholt, 155 Mont. 212, 222, 468 P.2d 764 (1970), the Montana Supreme Court commented on this legislative practice:

> Appropriation bills should not be held to amend substantive statutes by implication. Even under the federal system where Congress, unlike our state legislature, has the unquestioned power to permanently change existing law in appropriation bills, such tactics are recognized as exceedingly bad legislative practice. Tayloe v. Kjer, 84 U.S. App.D.C. 183, 171 F.2d 343.

The Court has also expressed concern with legislative restrictions in appropriation bills that tend to excessively interfere with the management obligations of the other branches of government. See Board of Regents v. Judge, 168 Mont. 433, 543 P.2d 1323 (1975). Thus we must carefully review the restrictive language of appropriations bills.

Nothing in the title to House Bill 500 makes reference to the restrictions placed on the appropriation. The title provides:

> AN ACT TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1983.

Article 5, section 11, Montana Constitution, provides in pertinent part:

> (3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.
>
> (4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate

> bill, containing but one subject. [Emphasis added.]

Although these provisions have never been judicially construed, they are virtually identical to sections of the 1889 Constitution construed in City of Helena v. Omholt, 155 Mont. 212, 468 P.2d 764 (1970). In Omholt an action was brought challenging a provision of a special appropriation bill which resulted in a substantive change in the Metropolitan Police Law. Pursuant to the substantive law, municipalities were authorized to establish a police reserve fund, supported in part by a three percent deduction in police officers' wages. These funds were to be used for police retirement benefits. Contributions were also made from other state and local government sources. Another section required the State Auditor to pay to each city with such a retirement system money for the police reserve fund based on a stated formula.

A special appropriation bill for the State Auditor contained a proviso prohibiting the State Auditor from paying that money to municipalities that did not deduct 5% of their policemen's wages. The effect of the proviso was to raise by 2% the contribution required of the police officers to establish an eligible reserve fund, and repeal by implication the requirement that cities only deduct 3% from the officers' salaries. The court struck down the restrictive proviso based on a finding that the appropriation bill contained a "false and deceptive" title, and thus violated the constitutional provision above. Omholt at 220.

The purpose of the constitutional provision was explained by the Court:

> [The] purposes are to restrict the Legislature to the enactment of laws the subjects of which are made known to lawmakers and to the public, to the end that anyone interested may follow intelligently the course of pending bills to prevent the Legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is

> given by the title. [Citations omitted.] [Omholt at 220.]

The Court expressly struck down the restrictive languag :

> Where, as here, the title to the appropriation bill expresses an appropriation to carry out the provisions of the specific statutory law and then proceeds to nullify and defeat the mandatory and all inclusive character of that specific statutory law without reference thereto in the title of the appropriation bill, we hold the latter to be deceptive and misleading in violation of the constitutional proscription. [Omholt at 221.]

The restrictions in the appropriation bill clearly conflict with the substantive statutory obligations of the Department. For the Department to follow the requirements set out in House Bill 500, a legal conclusion would have to be made that those provisos have repealed, by implication, the substantive statutory requirements of section 7-6-2352, MCA. It is impossible for the Department to comply with both provisions. Repeal by implication is not a concept that is favored in questions of statutory construction. See State ex rel. Jenkins v. Carish Theatres, ___ Mont. ___, 564 P.2d 1316 (1977); State v. Langan, 151 Mont. 558, 445 P.2d 565 (1968).

Considering the potential constitutional infirmities contained in the House Bill 500 provisions, it is my opinion that the Department should follow the substantive provisions of section 7-6-2352, MCA, as amended by chapter 465, Laws of Montana, 1981.

THEREFORE, IT IS MY OPINION:

> The Department of Administration should follow the provisions of section 7-6-2352, MCA, in providing financial assistance to counties for district court expenses.

Very truly yours,

MIKE GREELY
Attorney General