

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 29

COUNTIES - County road fund, date of fixing levy;
COUNTIES - County road fund, increase in permissive mill
levy prorated;
COUNTY BUDGET AND TAXATION - County road fund;
COUNTY BUDGET AND TAXATION - Increase in road tax levy
prorated;
COUNTY BUDGET AND TAXATION - Schedule for assessment,
budget, levy, collection;
COUNTY COMMISSIONERS, BOARD OF - Authority to fix
prorated road tax levy;
COUNTY COMMISSIONERS, BOARD OF - Date of exercising
taxation authority;
LEGISLATIVE BILLS - Effective date passed at same time,
impact on same subject;
STATUTORY CONSTRUCTION - Amendments given effect;
MONTANA CODE ANNOTATED - Title 7, chapter 6, part 23;
sections 1-2-201, 7-14-2501;
SESSION LAWS OF MONTANA, 1981 - Chapter 351 (House Bill
622); chapter 466 (Senate Bill 305).

OPINIONS OF THE ATTORNEY GENERAL

HELD: On the second Monday of August, 1981, the board of county commissioners may apply the increased road tax levy authorized by 1981 Montana Laws, chapter 35 at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, 1981, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981.

29 July 1981

Allin H. Cheetham, Esq.
Chouteau County Attorney
County Courthouse Building
Fort Benton, Montana 59442

Dear Mr. Cheetham:

You have asked my opinion regarding the practical application of the recent increase allowed by the Legislature for the permissive county road levy.

The question arises because of two amendatory acts passed by the 1981 Legislature, chapter 351 (HB 622) and chapter 466 (SB 305), Laws of Montana, 1981. Chapter 351 amends section 7-14-2501, MCA, to authorize the board of county commissioners of first, second, and third class counties to levy 15 mills rather than 12 mills for the county road fund. Fourth, fifth, sixth and seventh class counties may levy up to 18 mills. Chapter 466 amends section 1-2-201, MCA, by changing the effective date of all nonappropriation legislation from July 1 to October 1 following its adoption. As the counties' budget year begins July 1, 1981 (§ 7-6-2201, MCA), your question is when may the county apply the increased levy authorized by chapter 351?

To determine the impact of the October 1st effective date on the implementation of the increased road tax levy, it is necessary to examine the county budget and taxation procedures. The general powers of the board of county commissioners relating to roads are derived from section 7-14-2101, MCA, which authorizes the board of county commissioners to maintain and control county bridges and roads, and to levy taxes for those purposes.

OPINIONS OF THE ATTORNEY GENERAL

The procedure to levy road taxes, as well as other taxes, is prescribed in part 23 of chapter 6, Title 7, MCA. The procedure may be summarized as follows:

1. The county commissioners must prepare a preliminary budget based on a tabulation of estimated county expenditures and revenue sources by the second Monday in July of each year. §§ 7-6-2315, 7-6-2313, MCA.
2. The board of county commissioners must hold public hearings on the preliminary budget beginning on the Wednesday before the second Monday in August. § 7-5-2317, MCA.
3. On the second Monday in August the board of county commissioners must approve and adopt by resolution its final budget. § 7-6-2320, MCA.
4. On the second Monday in August, after adoption of the budget, the board of county commissioners must fix the tax levy for each fund of the budget. It must do so at a rate which is sufficient to raise the amount set out in the budget, and it must base the rate on the taxable valuation of the county for the current fiscal year. § 7-6-2321, MCA. In determining the fund requirements to be met by tax levy, the board may not exceed the maximum levy permitted by law for each fund. § 7-6-2319(3), MCA.

The actual collection of county taxes, including the tax for the county road fund, takes place on a schedule described in Title 15, MCA. Reduced to the bare bones, that schedule is as follows:

1. The department of revenue or its agent must assess all property subject to taxation in the county between January 1 and the second Monday in July. § 15-8-201, MCA.

OPINIONS OF THE ATTORNEY GENERAL

2. On or before the third Monday in October the county clerk and recorder must deliver the county assessment book to the county treasurer and charge the treasurer with the full amount of taxes levied. § 15-10-307, MCA.
3. Within ten days of receipt of the assessment book, the county treasurer must send tax notices to taxpayers of the county. § 15-16-101(2), MCA.
4. Taxpayers must then pay one half of their taxes on or before November 30 of each year and the remaining half on or before May 31 of each year. § 15-16-102(1), MCA.

This year, boards of county commissioners must fix the tax levies for each fund in their county budgets on Monday, August 10, 1981. Fifty-one days later, on October 1, 1981, nonappropriation legislation passed by the 1981 Legislature, including chapter 351, takes effect. Some 30 days after the effective date of chapter 351, the taxpayers will receive their tax notices.

Neither the amendment of section 7-14-2501, MCA, nor the amendment of section 1-2-201, MCA, dislodged section 7-14-2501, MCA, from its place in the scheme of county taxation or removed it from the time strictures imposed by law on county taxation procedures. The increased levy must be governed by the existing county budget and taxation provisions. Thus the board of county commissioners must adopt the current fiscal year tax levy for its county road fund on August 10, 1981, pursuant to section 7-6-2321, MCA.

Read together, the language of both amendments makes it clear that as of October 1, 1981, the board of county commissioners is authorized to levy a tax of up to 15 mills for its county road fund. What is not clear is whether the board may implement that authority on August 10, 1981, the single day within the relevant fiscal year on which the law commands the board of county commissioners to exercise its taxing authority.

OPINIONS OF THE ATTORNEY GENERAL

It is my opinion that on August 10, 1981, the board of county commissioners of first, second, and third class counties may fix a tax levy for the county road fund at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981. Prorating the permissive road tax levy in this fashion will not exceed the maximum levy permitted by law to be raised for the fund.

In resolving this question of statutory construction, it is important to give effect to the legislative intent in enacting both provisions without defeating the object of either piece of legislation. Dover Ranch v. County of Yellowstone, 121 St. Rptr. 727, 609 P.2d 711, 715 (1980).

Statutes passed at the same time and having an impact on the same subject are to be construed together if possible. Belote v. Bakken, 139 Mont. 43, 46, 359 P.2d 372 (1961). Legislative intent is to be sought in the language employed and the apparent purpose to be served. State ex rel. Federal Land Bank v. Hays, 86 Mont. 58, 63, 282 P. 32 (1929).

Obviously the Legislature intended to allow counties to increase the maximum levy for county roads this year. By virtue of chapter 466 that authorization does not become law until October 1st, three months after the county fiscal year has commenced, and after the budget has been adopted. Nevertheless, for three-fourths of the fiscal year the county will be authorized to impose greater mill levies.

The only way to give effect to both amended section 7-14-2501, MCA, and amended section 1-2-201, MCA, is to allow the board to prorate its road tax levy to comply with the maximum rate in effect before October 1, 1981, and the maximum rate in effect after that date. In State Highway Commission v. Marsh, 175 Mont. 460, 575 P.2d 38 (1978), the Montana Supreme Court used the device of prorating a condemnation award interest rate, according to the rates in effect before and after amendment of the relevant statute, to determine the amount of interest due the defendant. In that case, the Legislature had amended section 93-9913, R.C.M. 1947, to increase the interest allowed on condemnation awards

OPINIONS OF THE ATTORNEY GENERAL

from six percent to ten percent. The State had brought its condemnation suit before the effective date of the amendment, but the award was not finally adjudicated until after that date. The Court concluded that "it is more equitable to apply the six percent interest rate up to the effective date of the amendment and to apply the ten percent interest rate from the effective date thereafter." 575 P.2d at 43. The same logic applies here.

Construing the amendments of sections 7-14-2501 and 1-2-201, MCA, to allow the board to prorate its road tax levy on August 10, 1981, is the reasonable way to give effect to both amendments. A construction which would restrict the board to fixing a levy at the old 12 mill rate for the entire current fiscal year would negate the legislative object in amending section 7-14-2501, MCA, while advancing no purpose discernible in amended section 1-2-201, MCA. Statutory construction should not lead to absurd results where reasonable construction will avoid it. McClanathan v. Smith, 37 St. Rptr. 113, 606 P.2d 507, 510 (1980). A statute will not be interpreted to defeat its object or purpose and the objects sought to be achieved by the Legislature are of prime consideration in interpreting it. Dover Ranch v. County of Yellowstone, 37 St. Rptr. 727, 609 P.2d 711, 715 (1980).

THEREFORE, IT IS MY OPINION:

On the second Monday of August, 1981, the board of county commissioners may apply the increased road tax levy authorized by 1981 Montana Laws, chapter 351, at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, 1981, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981.

Very truly yours,

MIKE GREELY
Attorney General