

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 3

APPROPRIATIONS - Control of expenditures through; Funds received by state government restricted by law, trust agreement or contract;
DUE PROCESS - Relationship between assessment and value of benefit thereby conferred;
LEGISLATIVE BILLS - Titles to acts required to clearly express subject;
LEGISLATURE - Control of expenditures through appropriation;
LEGISLATURE - Power of appropriation;
STATE AGENCIES - Allocation to departments for administrative purposes only;
STATE AGENCIES - Control over expenditures;
STATE AGENCIES - Wheat Research and Marketing Committee;
TAXATION AND REVENUE - Assessments on wheat and barley;
TAXATION AND REVENUE - Distinct nature of assessments;
MONTANA CODE ANNOTATED - Sections 2-15-121, 2-15-3002, 17-2-101, 17-2-102, 17-8-101, 80-11-201, et seq.;
MONTANA CONSTITUTION - Article V, section 11; Article VIII, section 14.

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- HELD: 1. The Legislature has authority, through the appropriations process, to direct the expenditure of monies collected through the annual assessment on wheat and barley. The Wheat Research Committee may expend funds received as gifts or grants without appropriation and such other amounts as the Legislature may direct.
2. The expenditure of monies collected through the annual assessment on wheat and barley must conform to the purposes and policies set forth in the wheat research and marketing statutes, sections 80-11-201, et seq., MCA.

20 January 1981

W. Gordon McOmber, Director
Department of Agriculture
Agriculture/Livestock Building
Helena, Montana 59601

Dear Mr. McOmber:

You have requested my opinion regarding a number of questions related to expenditures from the funds of the Wheat Research and Marketing Committee. The issues referred to in your correspondence are as follows:

1. Whether the Montana Wheat Research and Marketing Committee has the exclusive power to direct the expenditure of monies collected through the annual assessment on wheat and barley.
2. Whether funds collected through the annual assessment on wheat and barley may properly be expended to fund a portion of the Centralized Services, Crop and Livestock Reporting, and Transportation Units of the Montana Department of Agriculture.

Before entering into a discussion of the legal issues presented by your inquiry, it is necessary to set forth summary background information. The Wheat Research and Marketing Committee is established and given direction by sections 80-11-201, et seq., and section 2-15-3002,

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MCA. The Committee is empowered pursuant to section 80-11-205, MCA, to provide for the conduct of research into the production, marketing, and uses of wheat and barley and to enter into contracts with various organizations for the purposes of improving wheat or barley quality, increasing efficient production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat and barley, and carrying out all research and marketing contemplated by the relevant statutes.

Funds for the operation of the Committee are derived from an annual assessment on wheat and barley set initially by statute at 2½ mills per bushel and thereafter set by the Committee. The assessment is levied and imposed on each grower of wheat or barley in the State of Montana. It is, however, subject to refund if the grower submits a written request for the same to the Department of Agriculture between 30 and 90 days following the assessment. § 80-11-207(4), MCA. In practice, this procedure is rarely utilized. Pursuant to section 80-11-210, MCA, an account is established in the federal and private revenue fund for deposits of all millage levies collected pursuant to the assessment and for the proceeds from all gifts, grants or donations to the Department for various types of research authorized by the statute. The statute goes on to direct that the account be kept separate and apart from all other accounts of the Department of Agriculture and shall be "maintained for the purposes of this part."

In both the 1977 and 1979 sessions a Joint Budget Subcommittee, in appropriating for the Department of Agriculture, determined that a portion of the grain assessment receipts be allocated to the Central Services Unit of the Department of Agriculture. That determination is part of the legislative history of the general appropriations bills for both sessions.

1. Whether the Montana Wheat Research and Marketing Committee has the exclusive authority to direct the expenditure of monies collected through the assessment on wheat and barley.

Legislative control over expenditures of the various state agencies and boards such as the Wheat Committee has routinely been exercised through the power of

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appropriation. The source of the appropriation power is found at article 8, section 14 of the 1972 Montana Constitution, which provides in part:

Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law....

Restrictions on the appropriation power include a requirement that the Legislature shall balance the budget and a requirement of strict accountability of all revenue received and money spent through the enactment of protective legislation. See Mont. Const. art. VIII, §§ 9, 11. Pursuant to the Treasury Fund Structure Act of 1963 (§§ 17-2-101, et seq., MCA), all funds received by state government are classified in order to:

[s]implify the accounting system and treasury fund structure of the state, to make possible the full utilization of modern accounting methods, to provide the legislature with a greater measure of control over public moneys, and to enable the financial records of the state to accurately reflect [governmental costs and revenues.]

Aside from a number of specialized university system accounts, there are nine basic funds. Pursuant to section 80-11-210, MCA, all of the funds received by the Wheat Research and Marketing Committee are required by law to be placed in the federal and private revenue fund established by section 17-2-102(4), MCA. The fund is described in the statute as consisting of "all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government." Pursuant to section 17-8-101(1), MCA:

Moneys deposited in [the federal and private revenue fund] with the exception of refunds...shall be paid out of the treasury only on appropriation made by law.

In Board of Regents v. Judge, et al., 168 Mont. 433, 446, 543 P.2d 1323 (1975), the Supreme Court held, inter alia, that to the extent that section 17-8-101, MCA, could be read to confer upon the Legislature the power to appropriate private funds received by state

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government which are restricted by law, trust agreement or contract, it was beyond the scope of the Legislature's power of appropriation.

The precise issue in answering your first question is whether the grants and assessments received by the Wheat Research and Marketing Committee and deposited in the federal and private revenue fund are restricted by law to an extent which would preclude appropriation and any associated restriction of expenditure.

Gifts, grants or donations for research purposes may be accepted by the Department of Agriculture and are available for expenditure directly by the Committee in accordance with any conditions of the grants, gifts, or donations. See § 80-11-208, MCA. Under the principles set forth in Board of Regents v. Judge, these monies are not subject to the appropriation power. The Supreme Court has held that it is therefore beyond the power of the Legislature to direct the manner in which such grants will be spent. On the other hand, receipts from assessments are not conditioned or restricted by contract. They are, however, restricted by law; that is, the purposes to which these funds may be committed are as set forth in sections 80-11-201, et seq., MCA. Nowhere within the terms of these restrictions, however, is there any indication of a legislative intent to remove the consideration of these funds from the budget process. On the contrary, pursuant to section 2-15-3002, MCA, the Committee is allocated to the Department of Agriculture for administrative purposes which requires inclusion of the Committee's budgetary request in the Department of Agriculture's budget. See § 2-15-121, MCA.

While the law provides that the assessment receipts are subject to the appropriations process, the Legislature must direct the expenditure of these funds in a constitutionally permissible manner. The restrictions on expenditures in this case must conform with the purposes as set forth in sections 80-1-201, et seq., MCA. While these purposes can be changed from time to time through legislative enactment, the appropriation bill would itself be an improper mechanism to effect such a change. This difficulty arises due to the evil which would be occasioned by concealing a change in the "substantive" law in a broad appropriations measure.

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Article V, section 11, 1972 Montana Constitution provides in relevant 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.

....

(6) A law may be challenged on the ground of non-compliance with this section only within two years after its effective date.

These provisions are similar to the section of the 1889 Montana Constitution construed by the Montana Supreme Court 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 are authorized to establish a police reserve fund, supported in part by a three percent deduction from police officers' wages. The State of Montana cooperates by contributing an amount equivalent to ten percent of the salaries earned by policemen in participating municipalities.

A special appropriation bill providing for the state "match" contained a proviso that municipalities not deducting five percent of their policemen's wages were ineligible for the state contribution. The effect of the proviso was to raise by two percent the contribution required of police officers to establish an eligible reserve fund.

The Court struck down the restrictive proviso based upon a finding that the special appropriations bill contained a "false and deceptive" title. Omholt at 220. The Court opined in rather strong language that appropriations bills should not be held to amend substantive statutes by implication.

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In considering the purpose of the relevant constitutional restrictions, the Court stated:

[T]hose 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 any one 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.

Omholt at 220.

In light of this constitutional restriction, and the principles as set forth in Board of Regents v. Judge and City of Helena v. Omholt, it is my opinion that the assessments collected pursuant to the provisions of section 80-11-201, et seq., MCA, are subject to the appropriation powers of the Legislature. However, in appropriating and directing the expenditure of these monies, the Legislature is restricted to the purposes as set forth in the Wheat Research statutes. To deviate from or expand upon those purposes without a corresponding amendment to the substantive Wheat Research statutes could subject the appropriation to a challenge similar to that brought successfully in the Omholt case.

2. Whether the assessment collected pursuant to the wheat research statutes may be expended to fund a portion of the operations of the Centralized Services, Crop and Livestock Reporting, and Transportation Units of the Montana Department of Agriculture.

In correspondence requesting this opinion, you have asked me to discuss a number of executive proposals under consideration for the expenditure of these monies.

As noted in the opening discussion of these issues, the last two Montana Legislatures have appropriated approximately \$20,000 from Wheat Research and Marketing funds to support the operations of the Central Services Unit of the Department of Agriculture. Central Services

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provides administrative services to the Committee in the form of payroll services, receipt and accounting for assessments, budgetary monitoring, and securing the issuance of warrants for grants and other miscellaneous purposes of the Committee.

Pursuant to the terms of sections 2-15-3002 and 2-15-121, MCA, the Committee is required to utilize the administrative services provided for by the Central Services Unit. It is beyond dispute, that if the Committee is authorized and directed to utilize certain services (those services being essential to the carrying out of the purposes directed by law) the authority and direction carries with it by necessary implication the authority to pay for those services.

The particular level of support to be provided to Central Services is for the Legislature to determine. However, since the type of assessment here authorized is distinct from taxes levied for the general public good, some caution must be exercised. Due process considerations impose limitations identified in the discussion of an analogous situation in State ex rel. Malott v. Board of Commissioners, 89 Mont. 37, 296 P. 1 (1930):

The justification and authority for levying special assessments is derived from the benefits which the expenditure of the tax or assessment confers on the owners of the land from special assessment districts and a tax out of all proportion to the benefits conferred could not be sustained.

Applying this principle to the issue discussed herein, it is clear that the amount of the Wheat Research assessment appropriated to fund Central Services must have some substantial relationship to the cost of services supplied by Central Services to the Committee.

Little discussion is necessary to relate the activities of the Crop and Livestock Reporting and the Transportation and Marketing Units to the purposes outlined in the Wheat Research and Marketing statutes. The Crop and Livestock Reporting program is a joint federal/state effort to prepare estimates and reports of production, supply, price, and other items necessary to

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the orderly operation of farm markets (ARM § 4.1.101). To the extent these estimates and reports relate to wheat and barley, they further the purposes of the Wheat Research statutes. The Transportation and Marketing Unit of the Department provides technical transportation expertise to agricultural commodity producers and to the extent the expertise is directed towards the two commodities addressed in the Wheat Research statutes, they further the purposes of those laws. Appropriations from the assessments provided for in section 80-11-206, MCA, insofar as they relate to the cost of relevant services provided to further the purposes of the Wheat Research statutes, are within the bounds of the restrictions placed upon the use of these funds.

Once again, I am compelled to underscore the distinct nature of the assessed funds. Due process requires careful consideration by the Legislature in appropriating these monies to ensure that amounts expended substantially relate to the fair costs of the services provided to further the purposes for which the assessment is levied. The agency should keep these considerations in mind when making its funding proposals to the Legislature.

THEREFORE, IT IS MY OPINION:

1. The Legislature has authority, through the appropriations process, to direct the expenditure of monies collected through the annual assessment on wheat and barley. The Wheat Research Committee may expend funds received as gifts or grants without appropriation and such other amounts as the Legislature may direct.
2. The expenditure of monies collected through the annual assessment on wheat and barley must conform to the purposes and policies set forth in the wheat research and marketing statutes, sections 80-11-201, et seq., MCA.

Very truly yours,

MIKE GREELY
Attorney General