

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 34

COUNTY BUDGET AND TAXATION - Levy of property taxes for special purposes;
COUNTY BUDGET AND TAXATION - Property tax levy to satisfy judgments;
JUDGMENTS - County taxes to satisfy judgments;
MONTANA CODE ANNOTATED - Sections 2-9-316, 7-6-2501, 7-6-2531, 7-6-4452;
OPINIONS OF THE ATTORNEY GENERAL - 27 Op. Att'y Gen. No. 37 (1957), 38 Op. Att'y Gen. No. 112 (1980).

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- HELD: 1. The mill levy limitation provided in section 7-6-2501, MCA, does not apply to special levies authorized for particular purposes.
2. The mill levy authorized by section 2-9-316(3), MCA, is a special levy not subject to the limit provided in section 7-6-2501, MCA.
3. The election requirement of section 7-6-2531, MCA, applies to general and special mill levies only when the levies exceed applicable statutory limits.

6 October 1981

J. Allen Bradshaw, Esq.
Granite County Attorney
P.O. Box 490
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Dear Mr. Bradshaw:

You have requested my opinion on the following question:

May a county impose a property tax levy pursuant to section 2-9-316, MCA, without regard to the mill levy limitation and election procedures set forth in sections 7-6-2501 and 7-6-2531, MCA?

Section 2-9-316, MCA, sets forth the various methods through which a political subdivision may obtain the funds necessary to satisfy a judgment against the political subdivision. Section 2-9-316(3), MCA, allows a political subdivision to levy a property tax of up to ten mills for this purpose. You inquire whether this tax is within the mill levy limitations for counties established in section 7-6-2501, MCA.

Section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental expenses of the county. It does not limit the county's power to levy additional taxes authorized by statute for special purposes. 27 Op. Att'y Gen. No. 37 (1957). Section 2-9-316, MCA, would make little sense if the ten mill tax provided in subsection (3) was intended to be a general fund tax, since under

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subsection (2) the county is already authorized to expend general fund monies to satisfy judgments. If subsection (3) is to have meaning, it must be read to confer taxing authority beyond the limitation on general fund taxes established in section 7-6-2501, MCA.

The county tax situation is to be distinguished from the situation of municipalities levying an all-purpose property tax. In 38 Op. Att'y Gen. No. 112 (1980), I discussed the relationship between the all-purpose mill levy and special mill levies which municipalities are authorized to impose. Cities have the option of imposing an all-purpose mill levy under section 7-6-4452, MCA, or imposing numerous special mill levies to fund governmental operations. As the language of that statute makes clear, when a city adopts an all-purpose levy it forfeits the power to impose additional special levies unless specifically authorized to do so by statute. No similar restriction appears in section 7-6-2501, MCA, on the powers of counties. The tax referred to in that section does not purport to be an "all purpose" tax levied "in lieu of" the special tax levies authorized elsewhere. Rather, it is simply a general tax levy for purposes of financing general fund expenditures for the general support of county government. Nothing in the statute expresses an intent to exclude additional tax levies authorized for special purposes.

You also inquire about the provisions of section 7-6-2531, MCA, which allows a county to exceed mill levy limits with voter approval. Since I have concluded that the tax authorized in section 2-9-316(3), MCA, is not subject to the limitation set forth in section 7-6-2501, MCA, it follows that the tax may be levied up to the ten mill limit without submitting the question to the voters under section 7-6-2531, MCA. If it should become necessary to exceed the ten mill limit, however, the matter must be approved through election under that section.

THEREFORE, IT IS MY OPINION:

1. The mill levy limitation provided in section 7-6-2501, MCA, does not apply to special levies authorized for particular purposes.

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2. The mill levy authorized by section 2-9-316(3), MCA, is a special levy not subject to the limit provided in section 7-6-2501, MCA.
3. The election requirement of section 7-6-2531, MCA, applies to general and special mill levies only when the levies exceed applicable statutory limits.

Very truly yours,

MIKE GREELY
Attorney General