

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 5

CONSERVATION DISTRICTS - Duty of board of county commissioners to levy assessment reported by conservation district supervisors;

COUNTY COMMISSIONERS - Duty of board of county commissioners to levy assessment reported by conservation district supervisors;

TAXATION AND REVENUE - Duty of board of county commissioners to levy assessment reported by conservation district supervisors;

MONTANA CODE ANNOTATED - Sections 76-15-501, 76-15-505, 76-15-506, 76-15-515, 76-15-516, 76-15-520.

HELD: Section 76-15-516, MCA, imposes a mandatory duty on the board of county commissioners of each county in which there is a conservation district to levy an assessment on the taxable real property within the district sufficient to raise the amount reported to them in the estimate of the supervisors.

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6 February 1981

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion concerning the duty of the board of county commissioners to levy assessments under section 76-15-516, MCA. Specifically, you have asked "whether the language in section 76-15-516, MCA, is mandatory or may the commissioners decline to make a levy within the statutory limit?" Read in the context of Title 76, chapter 15, I conclude that section 76-15-516, MCA, requires the board of county commissioners to levy an assessment sufficient to raise the amount reported to them by the supervisors of a conservation district.

Section 76-15-516, MCA, provides as follows:

Levy of regular and special assessment. (1) The board of county commissioners of each county in which there lies any portion of the district, may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district, except that cities that voted to be included in a district prior to July 1, 1971, shall be excluded from the district by a majority vote of the council. It shall be known as the "... (name of district) conservation district regular assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

(2) The board of county commissioners of each county in which there lies any portion of a project area may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. It shall be known as "... (name of project area) special assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors. [Emphasis added.]

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Under this statute the board of county commissioners is given the power to levy an assessment on the taxable real property within the district. Section 76-15-515, MCA, limits the amount of this assessment.

Although the term "may" is generally considered to be permissive the Montana Supreme Court has ruled that the term can be construed as mandatory. State ex rel. Griffin v. Greene, 104 Mont. 460, 469, 67 P.2d 995 (1937). Other provisions of Title 76, chapter 15, MCA, clearly contemplate that the duty of the board of county commissioners to levy a proper assessment is mandatory.

Section 76-15-501, MCA, provides in pertinent part:

A conservation district and the supervisors thereof shall have the power to:

....

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided....

This section implies that the district, and not the board of county commissioners, is vested with any discretion that attends the taxing authority in this part.

Likewise, section 76-15-506, MCA, providing the board of supervisors with the power to issue bonds, would be of no effect if the county commissioners could refuse to make the necessary assessment. In addition, section 76-15-520, MCA, makes county officers liable on their official bonds to "faithfully discharge" their duties connected with the assessment of district taxes.

The final part of your question asks if it would be proper for the Yellowstone Conservation District to register warrants up to the amount of their submitted budget inasmuch as no levy was made for this fiscal year. Section 76-15-505, MCA, indicates that when funds raised through the collection of the assessments are not sufficient for the proper maintenance and operation of the district the board may:

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(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the same; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

THEREFORE, IT IS MY OPINION:

Section 76-15-516, MCA, imposes a mandatory duty on the board of county commissioners of each county in which there is a conservation district to levy an assessment on the taxable real property within the district sufficient to raise the amount reported to them in the estimate of the supervisors.

Very truly yours,

MIKE GREELY
Attorney General