

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 59

APPROPRIATIONS - Application of budget amendment procedures to increase appropriation for office of Consumer Counsel;

CONSUMER COUNSEL - Application of budget amendment procedures to increase appropriation for office of Consumer Counsel;

MONTANA CODE ANNOTATED - Sections 69-1-223, 69-1-223(3), 69-1-224, 69-1-224(4).

HELD: The office of Consumer Counsel may not expend an unappropriated balance in its earmarked revenue account through a budget amendment.

17 May 1982

James C. Paine
Montana Consumer Counsel
34 West Sixth Avenue
Helena, Montana 59620

Dear Mr. Paine:

You have requested my opinion on the budget amendment procedure as it pertains to the office of Consumer Counsel. Section 69-1-223, MCA, creates an earmarked revenue account for the Consumer Counsel office funded by a fee, which is a percentage of gross receipts, assessed against the businesses and utilities regulated by the Public Service Commission. The statute provides that the Consumer Counsel office may be funded by a "base appropriation for regular operating expenses and a

OPINIONS OF THE ATTORNEY GENERAL

contingency appropriation for expenses due to an unanticipated caseload," both of which are to be paid from the earmarked revenue account funded by the fee. The amount of the fee assessed against regulated companies is determined by the Department of Revenue (hereinafter "the Department") under section 69-1-224, MCA. Regulated companies must report their gross receipts to the Department periodically. The Department then computes the percentage of these gross receipts necessary to fund the Legislature's appropriation to the Consumer Counsel office and sets the fee at a level estimated to be sufficient to raise the amount appropriated. If the revenue generated by the fee exceeds the amount expended from the fund in any year, section 69-1-224(4), MCA, requires the Department to apply the remaining balance in meeting the appropriation for the succeeding fiscal year, resulting in a correspondingly lower fee charged to the regulated companies.

For fiscal years 1982 and 1983, the Legislature enacted base appropriations for the office of the Consumer Counsel, but failed to provide a contingency appropriation for expenses related to unanticipated caseload. In setting the amount of the fee, however, the Department, for reasons which are not apparent, failed to apply the carry-over balance in the earmarked revenue account from fiscal year 1981 to reduce the amount of the fee collected in fiscal year 1982. As a result of the Department's action, a substantial unappropriated balance remains in the Consumer Counsel's earmarked revenue account. You inform me that several major cases within the Counsel's jurisdiction have recently been filed and that the Consumer Counsel will be unable to participate fully in these cases within the current base appropriation. You inquire whether the Consumer Counsel may seek a budget amendment to tap the unappropriated remaining balance in the earmarked revenue account to finance participation in these cases.

In my opinion, any unappropriated balance in the earmarked revenue account is not available to the office of the Consumer Counsel for expenditure under a budget amendment. Sections 69-1-223 and 69-1-224, MCA, compel this conclusion. Section 69-1-223(3), MCA, provides:

The amount of money which may be raised by the fee on the regulated companies during a fiscal

OPINIONS OF THE ATTORNEY GENERAL

year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

This section dovetails with section 69-1-224(4), MCA, which requires any money raised by the fee in excess of that expended in a fiscal year in effect to be rebated to the regulated companies in the form of a reduced fee for the succeeding fiscal year. Under these provisions, the amount of the earmarked revenue account which may be expended is limited to the amount appropriated and may not be increased by a budget amendment.

Your letter points to the provisions of HB 500, the legislative budget bill for fiscal years 1982 and 1983, which details the general budget amendment procedure for State agencies. You suggest that HB 500 establishes a budget amendment as an "other source" under section 69-1-223(3), MCA, from which the office of the Consumer Counsel can acquire spending authority. I disagree. HB 500, section 3(2), allows a budget amendment to tap an earmarked revenue account in emergency situations, but it makes no specific reference to the office of the Consumer Counsel. The question of whether the general language of HB 500 creates an implicit exception to the specific limitation on the office of the Consumer Counsel established in section 69-1-223(3), MCA, depends upon whether such an exception is consistent with the legislative intent, since in the absence of manifest intent to the contrary, the specific legislation controls the general. Dolan v. School District No. 10, 38 St. Rptr. 1903, 1907-08, 636 P.2d 825, 828 (1981).

The Legislature intended to limit regulated companies' tax liability under section 69-1-223, MCA, to the amount appropriated. It specifically provided in subsection (3) of that section that funds to be expended in excess of the amount appropriated must come from "other sources." If the fee raises more than the amount expended in any fiscal year, the unexpended balance does not revert to the general fund or remain in the earmarked fund, but rather inures to the benefit of the regulated companies under section 69-1-224(4), MCA, in

OPINIONS OF THE ATTORNEY GENERAL

the form of a corresponding lower fee for the succeeding year. Nothing in HB 500 suggests an intent to alter the balance of interests established in sections 69-1-223 and 69-1-224, MCA. I therefore conclude that it creates no implicit exception to the limitations on access to the earmarked revenue account.

THEREFORE, IT IS MY OPINION:

The office of Consumer Counsel may not expend an unappropriated balance in its earmarked revenue account through a budget amendment.

Very truly yours,

MIKE GREELY
Attorney General