

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 71

COUNTIES - Eligibility for state grants to district courts;
COUNTIES - Mill levy for district courts limited by budget law imposed on counties;
COURTS, DISTRICT - Eligibility for state grants to district courts;
DEPARTMENT OF ADMINISTRATION - District court grants, maximum mill levy not condition of eligibility for counties;
TAXATION AND REVENUE - Amount of county district court mill levy restricted by both budget law and statute establishing maximum permissible levy;
TAXATION AND REVENUE - District court mill levy;
MONTANA CODE ANNOTATED - Title 7, chapter 6, part 23; sections 7-6-2352, 7-6-2511;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 37 (1977); 38 Op. Att'y Gen. No. 31 (1979); 39 Op. Att'y Gen. No. 25 (1981).

HELD: The Department of Administration may not require a county to impose a maximum mill levy for district court expenses before it may be considered eligible for a state grant to district courts under section 7-6-2352, MCA.

3 September 1982

Morris L. Brusett, Director
Department of Administration
Mitchell Building
Helena, Montana 59620

Dear Mr. Brusett:

You have requested my opinion on the following question:

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May the Department of Administration properly make a maximum mill levy under section 7-6-2511, MCA, a condition of a county's eligibility for a state grant to district courts under section 7-6-2352, MCA?

Section 7-6-2352, MCA, authorizes the Department of Administration to make grants to counties for the district courts. No funds were appropriated when that section was enacted in 1979. The statute was amended and the program was funded for the first time in 1981. As amended, the statute requires, rather than permits, the Department of Administration to make grants to the counties from funds appropriated for that purpose. See 39 Op. Att'y Gen. No. 25 (1981). If the requests received from the various counties exceed the funds appropriate, each grant is reduced proportionately.

A county may apply for a grant by filing a report with the Department for the previous fiscal year stating that the numerous statutory conditions set forth in section 7-6-2352(2), MCA, have been or will be met. The statute requires that the applicant state that: (1) the county's expenses exceeded "the sum derived from the mill levy provided for in section 7-6-2511;" (2) the expenses taken into account (a) arise from litigation, (b) do not include building, capital, and library maintenance, replacement, and acquisition expenses, but rather (c) include only those mandatory court expenses listed in section 7-6-2352(a), MCA; (3) all expenditures from the district court fund were lawfully made; (4) no transfers were made from the district court fund to any other fund; (5) no expenditures were made from the district court fund which were not specifically authorized by sections 7-6-2511 and 7-6-2351, MCA; and (6) any other information required by the Department of Administration.

Your question focuses on the language of section 7-6-2352(2)(a), MCA, requiring that the county district court expenses exceed "the sum derived from the mill levy provided for in 7-6-2511," and the language of section 7-6-2352(2)(e), MCA, requiring that a county in making its application submit "any other information required by the department of administration." Section 7-6-2511, MCA, authorizes the governing body of each county to levy and collect a tax for district court

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costs and establish a maximum levy which varies according to the class of county, i.e., six mills for first- and second-class counties, five mills for third- and fourth-class counties, and four mills for fifth-, sixth-, and seventh-class counties.

The requirement of the Department of Administration that a county must levy the maximum tax before it is eligible for a state district court grant is not totally unreasonable, nor completely without support. In fact, a requirement that the counties be responsible for all district court expenses up to the amount which would have been received from a maximum mill levy would place the counties on a more equal footing in relation to the expenses they must bear for district court costs and finds support in the minutes of the legislative committees which considered both the original and the amended bill. See Minutes of the House Taxation Committee, 46th Legislature, April 6, 1979, in considering Senate Bill 463, and Minutes of the Senate Finance and Claims Committee of the 47th Legislature, of February 10, 11 and 20, 1981, in considering Senate Bills 300 and 373. Those minutes indicate an intent that the maximum mill levy provided in section 7-6-2511, MCA, establish a limit to district court expenses borne by the counties. As a practical matter a county might be required to pay an additional amount for district court expenses out of its general fund if the amount appropriated for state grants under section 7-6-2352, MCA, is less than the total grant requests received from the counties. See 38 Op. Att'y Gen. No. 31 (1979). In that case, the counties would share on a pro rata basis in the amount actually appropriated for grants. § 7-6-2352(1), MCA.

Section 7-6-2352(2)(e), MCA, does, of course, also permit the Department to impose additional informational requirements on the counties. The inequity which the Department has attempted to rectify by requiring that a county levy the maximum tax allowed under section 7-6-2511, MCA, in order to be eligible for a state grant is built into a system which requires the counties to bear the major burden of supporting a state court system. That inequity cannot be rectified by so simple a requirement of the Department. The requirement would force the counties to violate other statutes governing county budget and tax levy laws in order to be eligible for a state grant in case of budget overruns. It is,

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therefore, my opinion that a maximum mill levy under 7-6-2511, MCA, may not be required of any county as a condition of eligibility for a state district court grant under section 7-6-2352, MCA.

Section 7-6-2511, MCA, does not require a county to levy a tax equivalent to the maximum allowed by that statute. It simply establishes a maximum permissible levy. The tax which a county is permitted to levy at any particular time for district court expenses is limited, as are all other taxes which counties are permitted to levy, by the requirements of Title 7, chapter 6, part 23, MCA, which deals with county budget law. Under the statutory scheme, a district court judge's salary, as well as any actual and necessary travel expenses, is paid directly by the State. §§ 3-5-211, 3-5-213, and 3-5-215, MCA. All other district court expenses are statutorily imposed on the county although the district court is clearly a state court. See 37 Op. Att'y Gen. No. 37 (1977); 38 Op. Att'y Gen. No. 31 (1979).

The official in charge of the county-funded district court program must submit a budget to the county clerk and recorder estimating all anticipated sources of revenue other than taxation and all required expenditures for the next fiscal year by June 10 of each year. § 7-6-2311(1), MCA. The county commissioners then consider the proposed budgets of all county offices, including that of the district court to the extent it is to be funded by the county and arrives at a preliminary budget. § 7-6-2315, MCA. A copy of that preliminary budget is transmitted to the district court which may then make recommendations regarding changes in any portions of the preliminary budget relating to the court and considered necessary for it to discharge its obligations under the law. § 7-6-2351(1), MCA. No part of the district court fund may be used for construction or improvement of any building or for any purpose not statutorily authorized. § 7-6-2351(2), MCA.

The commissioners are then required to hold a public hearing on the proposed budget. § 7-6-2317, MCA. After the hearing, the commissioners again make a determination for each individual fund regarding sources of revenue and authorized expenditures as well as the amount of each fund which is to be paid for through a tax levy. §§ 7-6-2318, 7-6-2319, MCA. That information is then incorporated into the final budget which the commissioners adopt. § 7-6-2320, MCA.

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The statutory scheme embodied in Title 7, chapter 6, part 23, MCA, does not permit the county commissioners to simply levy the maximum tax allowed for any purpose by law. In fact, section 7-6-2319(1), MCA, requires that they add the cash balance in a particular fund at the close of the preceding fiscal year to the amount of estimated revenues which are to accrue to the fund during the current fiscal year. That sum is then deducted from the total amount of appropriations and authorized expenditures to give the amount necessary to be raised by the tax levy. The amount to be raised by a tax levy may be increased by up to one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year less any amounts appropriated for election expenses and emergency warrants. § 7-6-2319(2), MCA. The additional amount permitted to be raised by levy is to serve as a reserve to meet expenditures to be made from the fund during the months of July through November of the next fiscal year. Id. The amount which the commissioners determine is to be raised for any fund by means of a tax levy is thus the result of a statutorily mandated calculation which may in no event exceed the maximum levy permitted by law. § 7-6-2319(3), MCA. Clearly, the amount authorized by the statutorily mandated calculation to be levied for any particular fund may well be less than the maximum and indeed, if the calculation computes to an amount requiring a less than maximum mill levy, the county commissioners have no authority to impose a greater or maximum mill levy. This is no less true for the tax to be levied for the district court fund than it is for any other tax levy.

In providing the state grant to district courts, the Legislature recognized that unanticipated, but nevertheless mandatory, expenses might be incurred in any particular year by the district court. The minutes of the Senate Finance and Claims Committee of the 47th Legislature, previously referred to in this opinion, indicate recognition that excessive and unanticipated expenses might arise in the prosecution of capital criminal offenses or simply from an unanticipated increase in the volume of cases. The counties are prohibited by law from levying a tax which exceeds either the maximum permitted by law (in this case determined by section 7-6-2511, MCA) or the amount determined necessary to be levied for a particular fund

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under the statutes relating to county budget law, Title 7, chapter 6, part 23, MCA. It is a general rule of statutory construction that statutory provisions dealing with the same subject matter are to be construed in harmony with one another. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). The condition imposed by the Department would make the statute authorizing state grants to district courts, § 7-6-2352, MCA, conflict with the statutes relating to county budget law, Title 7, ch. 6, pt. 23, MCA, and that authorizing a county levy for district court expenses, § 7-6-2511, MCA. There is no statutory authority for an automatic imposition of the maximum allowable mill levy by the county governing body.

Furthermore, the Department's requirement arbitrarily eliminates from eligibility for a state grant to district courts all counties which, in following the statutorily prescribed procedure in arriving at a district court mill levy, impose less than the maximum tax allowed by law. Section 7-6-2352(2), MCA, clearly specifies all conditions of eligibility which the Legislature saw fit to impose. The authority granted the Department in section 7-6-2352(2)(e), MCA, permits the imposition of additional informational requirements only, not of substantive eligibility conditions.

THEREFORE, IT IS MY OPINION:

The Department of Administration may not require a county to impose a maximum mill levy for district court expenses before it may be considered eligible for a state grant to district courts under section 7-6-2352, MCA.

Very truly yours,

MIKE GREELY
Attorney General