

COUNTIES - Contents of county fund, proceeds of mill levy, transfer of county poor fund and responsibilities to Department of Social and Rehabilitation Services;  
COUNTY BUDGET - Report of final budget and tax levies to Department of Administration;  
COUNTY FUNDS - To include distributions of taxes pursuant to specific statutes;  
COUNTY POOR FUND - Content of fund upon its transfer to Department of Social and Rehabilitation Services when responsibilities for programs transferred;  
MILL LEVY - Proceeds of, reports of final budget and mill levies to Department of Administration;  
TAXATION - Proceeds of mill levy to include distribution of taxes pursuant to specific statutes;  
MONTANA CODE ANNOTATED - Sections 7-6-2321, 7-6-2322, 7-16-2103, 7-21-3410, 7-22-2432, 7-35-2123, 15-1-205, 15-16-114(1), 15-31-702, 22-1-304, 53-2-813, 61-3-509.

- HELD: 1. The Department of Social and Rehabilitation Services should rely upon the tax levies presented in the county clerk and recorders' reports that are provided pursuant to section 7-6-2322, MCA, for determining the amount levied by the county for purposes of its county poor fund during fiscal year 1982.
2. The proceeds of the mill levy set pursuant to section 7(1)(a) of HB 798 should include revenue from any source that is normally allocated among county funds in the proportion a fund bears to the total mill levies of the county.

11 August 1983

Russell E. Cater  
Office of Legal Affairs  
Department of Social and  
Rehabilitation Services  
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Dear Mr. Cater:

You have requested my opinion on two issues raised by enactment of House Bill 798 during the last legislative session. This bill allows counties to transfer all of their public assistance responsibilities to the Department of Social and Rehabilitation Services upon payment of a mill levy to the State as determined by section 7 of the bill (codified as section 53-2-813, MCA).

1. Should SRS rely upon the information presented by each county's clerk and recorder to the Department of Administration, as required by section 7-6-2322, MCA, in determining the amount levied by the county for purposes of its county poor fund during fiscal year 1982? And, if so, should SRS rely upon this information even in those counties in

which the information provided in accordance with section 7-6-2322, MCA, differs from information provided the Department of Revenue and/or county officials other than the clerk and recorder?

2. Does the amount due the State from the levy required by part (1)(a) of section 7, HB 798, include the revenue normally due the county poor fund from sources such as those required by sections 61-3-509 and 15-31-702, MCA?

Section 7-6-2322, MCA, requires that each year by September 15, the county clerk and recorder is to "forward a full and detailed copy of the final budget, together with the tax levies, to the department of administration." Your opinion request indicates that in the process of determining the amounts which counties actually levied in 1982, the base period for determining the amount the counties must levy and pay into an earmarked account in the State treasury pursuant to section 7 of the bill, SRS has been presented with conflicting reports from the Departments of Revenue and Administration and from some county officials. You indicate that in some cases the county figures differ from both the Department of Administration reports and the Department of Revenue annual reports.

The only report of county tax levies and final budgets mandated by statute is that required pursuant to section 7-6-2322, MCA. The tax levy for each fund within that final budget and report of tax levies is fixed as provided in section 7-6-2321, MCA. That section requires that the tax levy be set based upon the taxable valuation of the county for the current fiscal year. It may be set at a rate no higher than required to meet the amount approved and adopted for that fund in the final budget. The levy rate may not include any anticipated tax delinquency. The amount levied by the county would be reflected in the tax levy set to meet the final budget pursuant to this statute. The amount of tax actually collected under the authority of the tax levy may therefore differ from the levy itself due to the variables of: (1) the taxable valuation of the county for the current fiscal year, and (2) unanticipated tax

delinquency. This should account for the discrepancy in the reports provided to SRS.

A tax levy refers not to the proceeds of the levy but to "the exercise of a legislative function, whether state or local, which determines a tax shall be imposed and fixes the amount, purpose and subject of the exaction. 3 T. Cooler, Taxation § 1012 at 2043-44 (4th ed. 1924)." Carkonen v. William, 76 Wash. 2d 617, 458 P.2d 280, 286 (1969) (en banc). See also Black's Law Dictionary 816 (5th ed. 1979). While the proceeds of the tax levy may therefore vary from the amount set by the levy, each county should set only one levy for each county fund pursuant to section 7-6-2321, MCA, and that levy is the amount that should be reported to the Department of Administration pursuant to section 7-6-2322, MCA.

Section 7(1)(b) of HB 798 provides as follows:

A county that levied an amount less than 12 mills for purposes of its county poor fund during fiscal year 1982 must levy an equivalent amount to the poor fund mill levy assessed by that county during fiscal year 1982, plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982, for the building or operation of a medical facility.

It is clear that the "levied ... amount" to which this provision refers is the levy set by the county commissioners pursuant to section 7-6-2321, MCA, and is the figure upon which SRS should rely.

The report published annually by the Department of Revenue is not statutorily mandated and is compiled only for statistical purposes as a basis for preparing the biennial legislative report required pursuant to section 15-1-205, MCA. That report does not specifically include the county tax levies but considers them in determining the taxable value of all property of the state, counties, and cities. The values will vary as property values fluctuate. Similarly, the proceeds from the tax levies will vary with property value fluctuations and with unanticipated tax delinquencies.

SRS should utilize the tax levies reported to the Department of Administration pursuant to section 7-6-2322, MCA.

Section 7(2) of HB 798 requires that "the proceeds of the mill levy established in subsection (1)" be deposited in an earmarked revenue fund in the state treasury.

The second issue you present requires interpretation of the term "proceeds of the mill levy." The phrase read alone would seem to limit the contents of the county poor fund to the proceeds of the real property levy. It seems clear and unambiguous. However, when read together with other county finance statutes, the meaning of the phrase is not clear.

A number of specific statutes have been enacted by the Legislature which require counties to distribute the proceeds of particular taxes among the county funds on a proportionate basis. Each of these statutes provides a pro rata distribution that is controlled by the proportion a tax levied for a particular fund bears to the total mill levy of the taxing authority. Examples of statutes requiring distributions of taxes into existing funds are section 61-3-509, MCA (the motor vehicle suspension fund); section 15-31-702, MCA (corporate license taxes collected from banks or savings and loan associations); and section 15-16-114(1), MCA (personal property taxes).

Since their enactment, these statutes have been interpreted by county authorities to allow distribution of these taxes into county funds on a pro rata basis. The individual county funds into which these taxes are distributed are each authorized pursuant to statute. Language similar to that of section 7(1)(a) of HB 798 is contained in a number of these county fund statutes.

This language appears to authorize the county commissioners to establish a separate fund for the proceeds of the tax and to limit the use of the fund to the purposes set forth in the statute. The language read in context does not appear to limit the contents of the fund. Rather, it is authorizing legislation which governs the use of the fund. County commissioners have interpreted similar language to that effect. For

example, section 22-1-304, MCA, which governs the county library fund, provides as follows:

Tax levy--special library fund--bonds.

(1) The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 3 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 4½ mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. [Emphasis added.]

Other examples include sections 7-16-2103 (civic-youth-recreation centers), 7-35-2123 (cemeteries), 7-21-2410 (county fairs), and 7-22-2432, MCA, (mosquito control). Taxes have been distributed on a pro rata basis into these county funds pursuant to the specific authorizing statutes provided by the Legislature.

A basic rule of statutory construction presumes that the Legislature would not pass meaningless legislation and, therefore, statutes relating to the same subject must be harmonized to give effect to each other. Crist v. Segna, 622 P.2d 1028 (Mont. 1981). In order to give meaning to the statutes providing for a proportionate distribution of specific taxes among county funds, it is necessary to interpret the county fund statutes as statutes which limit the use of funds, rather than as statutes which limit the contents of the funds. This interpretation is consistent with past practice. It also appears consistent with legislative intent to augment county funds with the proceeds of other specific taxes.

The proceeds of the 12 mill levy provided for in section 7(1)(a) of HB 798 would include all monies collected

from real property taxes and distributed to that county fund (here the county poor fund) as well as all other monies deposited in the fund that were collected and distributed on a proportionate basis to the county funds pursuant to specific statutory authority.

THEREFORE, IT IS MY OPINION:

1. The Department of Social and Rehabilitation Services should rely upon the tax levies presented in the county clerk and recorders' reports that are provided pursuant to section 7-6-2322, MCA, for determining the amount levied by the county for purposes of its county poor fund during fiscal year 1982.
2. The proceeds of the mill levy set pursuant to section 7(1)(a) of HB 798 should include revenue from any source that is normally allocated among county funds in the proportion a fund bears to the total mill levies of the county.

Very truly yours,

MIKE GREELY  
Attorney General