COUNTIES - County property, lease of, distribution of revenues from;
COUNTY COMMISSIONERS - Powers, property of county, lease revenues, distribution of;
LANDLORD AND TENANT - Lease of building, county property;
PUBLIC FUNDS - Distribution of revenues, leases of county property;
MONTANA CODE ANNOTATED - Sections 7-1-2013, 7-5-2101, 7-8-2201, 7-8-2231, 7-8-2232.

HELD: If the sale of a county building is not being attempted, the board of county commissioners may use monies obtained from tenants in the county-owned building to defray the operational and maintenance costs of such building.

1 February 1984

J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Bourdeau:

You have requested my opinion on the following question:

> May the board of county commissioners use monies obtained from tenants in a county-owned building to defray the operational and maintenance costs of such building?

As you point out in your opinion request, the Montana statutes apparently conflict on this question.

Section 7-8-2201, MCA, authorizes county commissioners to purchase such property; that statute also authorizes commissioners to "preserve, take care of, manage and control" the property. Sections 7-1-2103 and 7-5-2101, MCA, support this broad view of county commissioners' powers.

However, section 7-8-2232, MCA, appears to restrict the powers of county commissioners. That statute provides that the county treasurer shall distribute all revenue derived from certain leases of county property. This revenue is to be distributed on the basis of the tax levy for the preceding calendar year. However, section 7-8-2232, MCA, is restricted in its application. The statute is limited to leases authorized by section 7-8-2231, MCA. That statute authorizes the leasing of county property "which is not necessary to the conduct of the county's business or the preservation of county property and for which <u>immediate</u> <u>sale</u> <u>cannot</u> <u>be</u> <u>had</u>." (Emphasis added.) A reasonable interpretation of this restriction is that the Legislature intended that since county property that could not be sold would not produce tax revenues, that lease revenue from such property be distributed in the same manner as tax revenue.

Chapter 100 of the 1931 Montana Laws, where these statutes were originally enacted, is also instructive. Chapter 100 was a 30-part enumeration of the powers of county commissioners. Section 1, subsection 8 (now section 7-8-2201, MCA) is a general statute authorizing county commissioners to acquire and manage real or personal property. It is set among other general sections authorizing the acquisition or erection of public buildings. Subsection 28 (now split into sections 7-8-2231 and 7-8-2232, MCA) is a specific statute setting procedure for the lease of property which cannot be sold immediately. It is set among other specific statutes dealing with health and finances. While the specific statute does take precedence over the general, the specific statute is also limited in its terms. I conclude that the application of section 7-8-2232, MCA, is limited to the distribution of revenue from the leases of county property that county commissioners are trying unsuccessfully to sell.

THEREFORE, IT IS MY OPINION:

> If the sale of a county building is not being attempted, the board of county commissioners may use monies obtained from tenants in the county-owned building to defray the operational and maintenance costs of such building.

Very truly yours,

MIKE GREELY
Attorney General