

APPROPRIATIONS - Encumbrance and reversion of funds appropriated but unexpended at the close of fiscal year;
COAL BOARD - Encumbrance of funds appropriated for local impact assistance;
COAL BOARD - Reversion at close of fiscal year of funds appropriated for local impact assistance;
ADMINISTRATIVE RULES OF MONTANA - Section 8.101.302;
MONTANA CODE ANNOTATED - Sections 15-35-108, 17-7-302, 17-7-304, 27-1-105, 90-6-202, 90-6-205, 90-6-207, 90-6-211.

- HELD: 1. The coal board does not incur a "valid obligation" against its appropriation by inviting a full application for grant after screening a preapplication.
2. The provision of section 17-7-304, MCA, requiring the reversion of unexpended and unencumbered portions of appropriations at the close of the fiscal year, applies to the appropriations to the coal board from the local impact and education trust fund.
3. The coal board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under section 17-7-302, MCA.
4. The legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board appropriations to seven-fifteenths of the income projected to the local impact and education trust fund in each fiscal year.

3 February 1983

Richard M. Weddle
Montana Coal Board
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0401

Dear Mr. Weddle:

You have requested my opinion on questions dealing with the availability of funds for coal board grants, when procedures for approval of the grants overlap the end of one fiscal year and the beginning of another. Your letter informs me that the coal board customarily reviews grant applications in a two-stage process. Parties seeking grants complete a "preapplication" containing certain information regarding the applicant and the purposes of the application. See § 8.101.302, ARM. The board then screens the preapplication and reaches a decision whether to call for a full application. If a full application is requested, the board reviews it and the preapplication and votes to either award or deny the grant. The decision to call for a full application in no way binds the board to award all or part of the money requested.

You further inform me that on June 25, 1982, the board reviewed eight preapplications on which full applications were requested. The board also voted to "encumber" funds from the board's fiscal year 1982 appropriation sufficient to finance the eight grants on which full applications were requested. On July 27, 1982, the Department of Commerce Central Services Division informed the board by memorandum that it could not accrue the "encumbered" funds from the board's appropriation for fiscal year 1982 because the board had not incurred a "valid obligation" in connection with these grant applications. On August 12, 1982, the board met and approved seven of the eight grant applications.

You present several questions arising from the above facts. First, you inquire whether the board has the power, either through the approval of a grant preapplication or otherwise, to encumber funds in one fiscal year for expenditure in later fiscal years. The question is significant because under section 17-7-304, MCA, the portion of an agency's appropriation not expended or encumbered at the close of a fiscal year reverts "to the several funds and accounts from which originally appropriated," in this case to the local impact and education trust fund. Thus, under the facts stated above, if the board's actions at its June 25, 1982, meeting did not encumber the funds in question, they reverted to the trust fund and became unavailable for coal board grant purposes.

Section 17-7-302, MCA, provides in part that "[a]n appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created...." In my opinion, the board's nonbinding decision to seek a full application from a grant applicant does not constitute a "valid obligation" against the board's appropriation. The significance of the word "obligation" is that it connotes a legally binding duty to perform or refrain from performing an act. § 27-1-105, MCA; see Kinsman v. Stanhope, 50 Mont. 41, 47, 144 P. 1083, 1084 (1914). While the Montana Supreme Court has not construed section 17-7-302, MCA, a California decision provides an example of a "valid obligation." In State v. Agostini, 294 P.2d 769, 773 (1956), the California Court of Appeals construed a statute similar in all pertinent respects to Montana's, and held that a tender of payment by the State in response to an offer to sell real estate constituted a "valid obligation" which prevented a reversion of the funds tendered. There is no evidence that in drafting section 17-7-302, MCA, the Legislature used the term "obligation" in any sense other than the commonly understood meaning set forth above. The facts stated in your letter demonstrate that the coal board incurs no legal duty to provide funds when it requests a full application following review of a preapplication. I therefore conclude that by this action the coal board does not incur a "valid obligation" against its appropriation for purposes of section 17-7-302, MCA.

Your letter suggests that the provisions of section 17-7-304, MCA, should not apply to local impact funds appropriated to the coal board from the local impact and educational trust fund. I disagree. The Legislature appropriates money to the coal board as a discretionary matter under section 90-6-207, MCA. There is no constitutional impediment to reversion of unexpended local impact grant funds to the local impact and education trust fund at the close of a fiscal year, nor is there any indication of a legislative intent to except the coal board grant moneys from the operation of section 17-7-304, MCA.

You next inquire whether the coal board possesses the inherent power to encumber funds at the close of a fiscal year to prevent their reversion to the general fund without complying with section 17-7-302, MCA. In my opinion it does not. The coal board is a creation of

the Legislature and it possesses only those powers which the Legislature has given it. See State ex rel. Jones v. Erickson, 75 Mont. 429, 458, 244 P. 287, 298 (1926). Title 90, chapter 6, part 2, MCA, sets forth the powers and duties of the board. Nowhere in these statutes is the board empowered to disregard the Legislature's mandates regarding expenditure, encumbrance, and reversion of appropriated funds. It is true, as you suggest, that reversion of these moneys to the trust fund may impede the board in fulfilling its duty to provide local impact aid. However, the same argument could be made to defeat reversion of funds in many programs of state government. The Constitution does not vest the coal board with the authority to disregard legislatively created financial requirements.

Your next question involves the availability of the reverted funds for reappropriation by the Legislature to the coal board. The local impact and education trust fund is financed by 37½% of the revenue produced by Montana's coal severance tax, §§ 15-35-108(1)(c) and 90-6-202, MCA, and the fund is currently being appropriated only for local impact assistance and educational purposes. § 90-6-207(3), MCA. The amount appropriated to the coal board is left to the discretion of the Legislature, although section 90-6-205, MCA, provides that the amount awarded by the board may not "exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund...." You inquire whether the "seven-fifteenths" limitation applies to revenue paid into the trust fund in any given year, or whether the Legislature is free under section 90-6-205, MCA, to appropriate up to seven-fifteenths of the entire aggregate amount in the trust fund for coal board grants. The question takes on added significance when viewed in light of the reversion provisions of section 17-7-304, MCA. If section 90-6-205, MCA, is read to limit the coal board's appropriation to seven-fifteenths of the trust fund revenue projected for that year, unexpended money reverted to the fund may not be reappropriated for grants, since section 90-6-211, MCA, dedicates the principal of the fund to educational purposes except to the extent that section 90-6-205, MCA, allows the coal board to award grants.

Your letter informs me that the Legislature historically has appropriated to the coal board either seven-elevenths or, after June 30, 1979, seven-fifteenths of

the amount projected to accrue to the trust fund for the fiscal year. This legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board to seven-fifteenths of each year's revenue paid into the trust fund, rather than seven-fifteenths of the fund's total principal. See Erickson, 75 Mont. at 440. If this interpretation is incorrect, the current Legislature has the power to demonstrate its disagreement by amending the statute or appropriating a sum in excess of seven-fifteenths of the fund's projected revenue for the fiscal year. This can be done by simple majority vote.

Your letter points out that the result of this opinion will be to deprive the coal board of appropriated funds which it is unable to expend or encumber prior to the end of the fiscal year. This may very well be true, but the power to remedy the situation rests with the Legislature. At least three legislative actions are available. The Legislature could affirmatively exempt the coal board from the reversion provisions of section 17-7-304, MCA, in effect reappropriating in each fiscal year the unexpended funds from the prior fiscal year. The Legislature could amend section 90-6-205, MCA, to clarify the application of the "seven-fifteenths" limitation. Finally, the Legislature could simply appropriate to the coal board more than seven-fifteenths of the projected revenue for the upcoming fiscal years, thereby demonstrating its interpretation of the limitation and, in effect, amending it by implication. In addition, your letter points out that the coal board's grant application procedures are not established by statute. The board may wish to investigate the possibility of streamlining its grant procedures with the intent of allowing it to complete action on pending applications before the close of each fiscal year.

THEREFORE, IT IS MY OPINION:

1. The coal board does not incur a "valid obligation" against its appropriation by inviting a full application for grant after screening a preapplication.
2. The provision of section 17-7-304, MCA, requiring the reversion of unexpended and unencumbered portions of appropriations at the

close of the fiscal year, applies to the appropriations to the coal board from the local impact and education trust fund.

3. The coal board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under section 17-7-302, MCA.
4. The legislative interpretation of section 90-6-205, MCA, suggests that the Legislature intended to limit the coal board appropriations to seven-fifteenths of the income projected to the local impact and education trust fund in each fiscal year.

Very truly yours,

MIKE GREELY
Attorney General