

COUNTY GOVERNMENT - County park board funding and administration of finances;  
PARKS - Funding from county general fund;  
PARKS - Separation of restricted and unrestricted county park revenues;  
PUBLIC FUNDS - Interest credited to county general fund;  
PUBLIC FUNDS - Separation of restricted and unrestricted county park revenues;  
TAXATION AND REVENUE - Authority to levy special tax for county park fund;  
MONTANA CODE ANNOTATED - Sections 7-6-204, 7-6-2311 to 7-6-2321, 7-6-2501, 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, 7-16-2301, 7-16-2302, 7-16-2321, 7-16-2324, 7-16-2327 to 7-16-2329, 76-3-606.

- HELD: 1. A county park board does not have the authority to levy a special tax for park purposes.
2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324, and 76-3-606, MCA.
  3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.
  4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

25 April 1984

Harold F. Hanser  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on several questions relating to the funding and management of finances of county park boards, as follows:

1. Is a county park board, formed pursuant to Title 7, chapter 16, part 23, MCA, limited in its spending authority to the proceeds arising from "the sale of hay, trees, or plants or from the use of or leasing of lands and facilities," or may such board submit an annual budget request in excess of such nontax revenues, funding the excess with a special ad valorem tax mill levy? If a mill levy is authorized, is there any limit to the number of mills which may be levied for park purposes?
2. Are the general fund and park board fund methods of funding county park operations mutually exclusive, or may they be utilized in combination?
3. In order to effectively administer the mandates of sections 76-3-606(2) and 7-16-2324(4), MCA, may either a board of county commissioners or a county park board create a separate fund apart from the park board operating fund, to account for revenues whose use is restricted to "the purchase of additional lands or for the initial development of parks and playgrounds"?
4. Assuming that the restricted cash in lieu of dedication and land sale revenue can be invested, must the interest earned be used only for the purchase or initial development of parks, or could the interest be used to fund the park board's operations?

A county park board created pursuant to Title 7, chapter 16, part 23, MCA, is a department of county government with powers specifically provided by statute. § 7-16-2301, MCA. The park board consists of the county commissioners and six other persons. § 7-16-2302, MCA. The park board is authorized to pay all obligations

arising from the performance of its statutory duties and may also incur an indebtedness on behalf of the county. §§ 7-16-2321, 7-16-2327, MCA.

You wish to know whether the county park board is authorized to levy a separate tax to finance its obligations. The relevant statutes provide:

All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund. [§ 7-16-2328, MCA.]

The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund. [§ 7-16-2329, MCA, emphasis added.]

Before a governing body may impose a tax, it must have clear and specific authority providing for the imposition of that tax. Burlington Northern v. Flathead County, 176 Mont. 9, 575 P.2d 912 (1978). Tax statutes are strictly construed against the taxing authorities and in favor of the taxpayer. Id. Usually the Legislature expressly and specifically gives authority for special tax levies and sets specific mill limits on such special taxes. See, e.g., §§ 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, MCA. While the Legislature need not use the words "authorized to levy a tax," it must do more than merely refer to a special fund. Burlington Northern v. Flathead County, supra. In Burlington Northern, the Montana Supreme Court held that a special tax was authorized by statutes which directed the county superintendent to determine the retirement fund levy requirement and to "fix and set" the retirement fund levy. The park board law does not meet the degree of specificity required by Montana law to authorize the imposition of a separate tax. The statutes in question merely allow the county treasurer to establish a separate fund for park purposes.

While a separate tax for park purposes has not been authorized by the Legislature, it is clear that the

Legislature did not intend to limit the park fund to the money raised by sale of hay, trees, or plants or by lease of lands and facilities. Such a construction would render meaningless the references in sections 7-16-2328 and 7-16-2329, MCA, to moneys raised by tax for park purposes. It is presumed that the Legislature does not pass meaningless legislation, and statutes relating to the same subject are to be harmonized, giving effect to each. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981). The park board law must be read together with the county budget law, Tit. 7, ch. 6, pt. 23, MCA. As a department of county government, the county park board must file estimates of probable revenues from sources other than taxation and of all expenditures required for the next fiscal year. § 7-6-2311, MCA. Based upon this information from all departments, the county commissioners prepare the budget, determine the amount to be raised by tax for each fund, and fix the general tax levy. §§ 7-6-2311 to 2321, MCA. Since a specific separate tax levy is not authorized for the park fund, additional money must be appropriated from the county general fund authorized by section 7-6-2501, MCA, if the revenue from sources other than taxation is insufficient to meet the necessary expenditures.

Your third and fourth questions concern the administration of certain restricted revenues raised from sale of park lands and from cash donations in lieu of dedication of land for park purposes pursuant to sections 7-16-2324 and 76-3-606, MCA. Revenues from these sources are restricted in use to the sole purpose of the purchase of additional lands or the initial development of parks and playgrounds. §§ 7-16-2324(4), 76-3-606(2), MCA. While these revenues are a part of the park fund, they should be separated from unrestricted park fund revenues, either through separate bank accounts or through acceptable accounting procedures, so that the restricted revenues are used solely for the authorized purpose. The interest earned from the deposit or investment of the restricted and unrestricted portions of the park fund must be credited to the general county fund in accordance with section 7-6-204(1), MCA.

THEREFORE, IT IS MY OPINION:

1. A county park board does not have the authority to levy a special tax for park purposes.
2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324, and 76-3-606, MCA.
3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.
4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

Very truly yours,

MIKE GREELY  
Attorney General