

VOLUME NO. 40

OPINION NO. 78

DEPARTMENT OF COMMERCE - Montana Economic Development Board bound by local government decision on whether project is in public interest;  
ECONOMIC DEVELOPMENT - Authority of local government to determine public interest of project under Montana Economic Development Act;  
MONTANA CODE ANNOTATED - Sections 1-2-102, 17-5-1501 to 17-5-1529, 17-5-1526, 17-5-1527.

HELD: If the local government elects to hold a hearing pursuant to section 17-5-1526 or section 17-5-1527, MCA, to determine whether a project is in the public interest, the Montana Economic Development Board is bound by the decision of the local government on the public interest question.

30 October 1984

D. Patrick McKittrick, Chairman  
Montana Economic Development Board  
Department of Commerce  
1424 Ninth Avenue  
Helena MT 59620

Dear Mr. McKittrick:

You have requested my opinion as to the Board's authority to make the determination of "public interest" under the Montana Economic Development Bond Act of 1983, §§ 17-5-1501 to 1529, MCA. Under the Act, it is clear that the Montana Economic Development Board may finance a project only upon a finding that the project is in the public interest. §§ 17-5-1526(1)(a), 17-5-1527(1)(a), MCA. The Act also provides an opportunity for the local government of the jurisdiction where the project will be located to hold a hearing to determine whether the project is in the public interest. §§ 17-5-1526(2), 17-5-1527(2), MCA. You wish to know whether the local government's determination on the public interest issue is final or whether the Board has the authority to reject the local government's decision on that issue.

Sections 17-5-1526 and 17-5-1527, MCA, govern the procedures to be followed prior to financing projects. The former section applies to minor projects and the latter section applies to major projects. With respect to the public interest issue, the two statutes are virtually identical. Section 17-5-1526, MCA, provides:

(1) The board may finance projects ... under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

....

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the

governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project. [Emphasis added.]

Section 17-5-1527, MCA, has the same provisions, with minor differences in phrasing.

The portions of both statutes which provide that "the board may finance ... projects ... under this part only when it finds that the financing is in the public interest" may appear at first glance to support your position that the Board has the ultimate authority to override the local government's decision. However, subsection (2) of each statute provides that the finding of public interest must be made after a hearing, which may be held either by the local government or by the Board. Statutes must be read in their entirety and legislative intent may not be gleaned from the wording of any particular section or sentence, but only from consideration of the whole. Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 553 P.2d 980 (1976). Under the plain language of the Act, only one public hearing on the issue of public interest is contemplated. If the local government holds the hearing, it must notify the Board of its "determination" on the public interest question. §§ 17-5-1526(3), 17-5-1527(3), MCA. The noun "determination" is defined by Webster's New Twentieth Century Dictionary (2d ed. 1979) as synonymous with "decision" or "resolution," and the verb "determine" means "to settle conclusively." "Determination" thus connotes a final decision, as opposed to the term "recommendation" which connotes advice to be accepted or rejected. With respect to the public interest question, the Board's findings are merely a procedural formality if the local government has exercised its option to hear the testimony. The Act

plainly does not authorize the Board to override the determination made by the local government.

Even if the statutes were ambiguous, the legislative history of the Act strongly supports my conclusion that the Legislature intended the local government, if it elects to hold the public hearing, to determine conclusively whether the project is in the public interest. The amendment allowing local governments the option to conduct the public interest hearing was introduced during the hearing on House Bill 700 in the House Select Committee on Economic Development on February 15, 1983. The minutes of the meeting reflect extensive discussion of the proposed amendment and general agreement that the local government should be involved. The comments of Representative Fabrega, who sponsored the bill, are reported as follows:

Representative Fabrega stated his understanding of the Missoula and Billings amendment is they would hold a hearing, and first of all the board has to advise the city that the request has been made, they hold the hearing and within 10 days of the hearing they have to advise the board as to their decision. If the local entity decides the project is not in their best interest, that is as far as it would go.

The minutes further reflect the intent that, in the event the local government held the hearing on public interest and determined the project to be in the public interest, the Board would then have a meeting to determine those factors regarding financing. The proper resolution of your question is thus clear from the plain meaning of the Act as well as its legislative history.

THEREFORE, IT IS MY OPINION:

If the local government elects to hold a hearing pursuant to section 17-5-1526 or section 17-5-1527, MCA, to determine whether a project is in the public interest, the Montana Economic Development Board is bound by the decision of the local government on the public interest question.

Very truly yours,

MIKE GREELY  
Attorney General