

VOLUME NO. 41

OPINION NO. 28

COUNTIES - No authority to levy separate tax for local air pollution programs;
COUNTY COMMISSIONERS - No authority to levy separate tax for local air pollution programs;
TAXATION AND REVENUE - No authority to levy separate tax for local air pollution programs;
MONTANA CODE ANNOTATED - Sections 7-6-2501, 75-2-301, 75-2-302;
MONTANA CONSTITUTION - Article XI, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 27 Op. Att'y Gen. No. 37 (1957), 39 Op. Att'y Gen. No. 34 (1981).

HELD: The county commissioners of Yellowstone County may not impose a separate tax levy to fund local air pollution programs.

12 September 1985

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

Dear Mr. Hanser:

You have requested my opinion on the following question:

May the county commissioners impose a separate tax levy to fund local air pollution programs?

Yellowstone County is a local government with general powers. A local government with general powers has such powers as are provided or implied by law, Mont. Const. art. XI, § 4(1)(b), and its powers are to be liberally construed. Mont. Const. art. XI, § 4(2).

Section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental expenses of the county. It does not limit the county's power to levy additional taxes authorized by statute for special purposes. 39 Op. Att'y Gen. No. 34 (1981); 27 Op. Att'y Gen. No. 37 (1957). However, before a governing body may impose a tax, it must have clear and specific authority providing for the imposition of the tax. Burlington Northern v. Flathead County, 176 Mont. 9, 13, 575 P.2d 912, 914 (1978); Swartz v. Berg, 147 Mont. 178, 182, 411 P.2d 736, 738 (1966).

Sections 75-2-301 and 75-2-302, MCA, pertain to local air pollution control programs. Section 75-2-301(1), MCA, provides:

Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program. [Emphasis added.]

There is no indication in the statute that the funds for the local air pollution program may be derived from a special tax levy. Without clear authority in the statute, the county may not impose a separate tax levy.

THEREFORE, IT IS MY OPINION:

The county commissioners of Yellowstone County may not impose a separate tax levy to fund local air pollution programs.

Very truly yours,

MIKE GREELY
Attorney General