

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 108

ADMINISTRATION, DEPARTMENT OF - Deduction of allocated program costs from income of state special revenue accounts;

INVESTMENTS, BOARD OF - Deduction of allocated program costs from income of state special revenue accounts;

LIVESTOCK, BOARD OF - Deduction of allocated program costs from income of state special revenue accounts;

LIVESTOCK, DEPARTMENT OF - Deduction of allocated program costs from income of state special revenue accounts;

MONTANA CODE ANNOTATED - Sections 17-6-201(8), 81-1-104;

MONTANA CONSTITUTION - Article XII, section 1.

HELD: Section 17-6-201(8), MCA, allows the deduction of allocated program costs from investment earnings of the state special revenue accounts referred to in section 81-1-104, MCA.

23 August 1988

Ellen Feaver, Director
Department of Administration
Room 155, Mitchell Building
Helena MT 59620

Les Graham, Executive Secretary
to the Board of Livestock
Scott Hart Building
301 Roberts
Helena MT 59620

Dear Ms. Feaver and Mr. Graham:

You have requested my opinion on the following questions:

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1. Does section 17-6-201(8), MCA, allow the deduction of allocated program costs from investment earnings of the state special revenue accounts referred to in section 81-1-104, MCA?
2. Did the enactment of section 17-6-201(8), MCA, impliedly repeal earlier specific statutes?
3. Is section 17-6-201(8), MCA, in conflict with Article XII, section 1 of the Montana Constitution?

Section 81-1-104, MCA, provides:

The board may direct the board of investments to invest funds from state special revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the state special revenue account of the department from which the investment is made.

The "board" referred to in this provision is the Board of Livestock, and the "department" is the Department of Livestock. The Department of Livestock has two state special revenue accounts which are affected by this statute: the account for inspection and control and the account for animal health.

Section 17-6-201(8), MCA, provides in pertinent part:

(a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (8)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund as defined in 17-2-102 must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

The "board" referred to in this statutory provision is the Board of Investments.

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Prior to the adoption of House Bill 248 by the 1987 Montana Legislature, which contained the present language of section 17-6-201(8), MCA, the Department of Administration and other state entities provided administrative services to many state special revenue accounts but were unable to recover the cost to the general fund of providing those services. House Bill 248 was an attempt to provide a statutory basis for the recapture of general fund administrative costs from state special revenue accounts such as those referred to in section 81-1-104, MCA.

Your question indicates that section 81-1-104, MCA, has been interpreted by some as a mandatory provision which requires that all income derived from the investment of funds in those state special revenue accounts be credited back to those accounts to the exclusion of any deductions. I do not agree with such an interpretation.

First, the plain language of section 81-1-104, MCA, does not indicate that the Legislature intended to exclude deductions from the investment earnings of the Department of Livestock's special revenue accounts. The statutory language merely requires the proper crediting of such earnings once the Board of Livestock has decided to participate in the unified investment program. Moreover, the more specific statute, section 17-6-201(8), MCA, expressly mandates the deductions at issue here, and it is an accepted canon of statutory construction that this more specific statute controls over a more general one where any conflict exists. Phillips v. Lake County, 43 St. Rptr. 1046, 721 P.2d 326 (1986); Witty v. Fluid, 43 St. Rptr. 354, 714 P.2d 169 (1986).

Second, and more importantly, it must be presumed that, when the 1987 Montana Legislature adopted House Bill 248, it did not adopt a meaningless statute. State ex rel. Palmer v. Hart, 201 Mont. 526, 655 P.2d 965 (1982); Mont. Contractors' Ass'n v. Dept. of Highways, 43 St. Rptr. 470, 715 P.2d 1056 (1986). To hold that section 81-1-104, MCA, prohibits the deduction of administrative costs from the investment earnings of the Department of Livestock's special revenue accounts, though, would be to presume just the opposite. It is quite apparent that the Legislature intended each agency to pay its proportionate share of the administrative costs incurred by the Department of Administration and other state entities.

As to your second question, in reviewing the statutes at issue here, I find no earlier more specific statute

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which could be impliedly repealed by the enactment of section 17-6-201(8), MCA.

Your third question is beyond the scope of an Attorney General's Opinion as it involves the constitutionality of existing legislation.

THEREFORE, IT IS MY OPINION:

Section 17-6-201(8), MCA, allows the deduction of allocated program costs from investment earnings of the state special revenue accounts referred to in section 81-1-104, MCA.

Very truly yours,

MIKE GREELY
Attorney General