

OPINIONS OF THE ATTORNEY GENERAL

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OPINION NO. 110

COAL - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

LEGISLATURE - Authority to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

STATE GOVERNMENT - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

TAXATION AND REVENUE - Authority of Legislature to appropriate income and interest earned on the coal severance tax trust fund and deposited into the permanent fund;

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MONTANA CODE ANNOTATED - Sections 1-2-102, 17-5-703, 17-5-704;
MONTANA CONSTITUTION - Article V, section 11(1); Article IX, section 5.

HELD: The Legislature may not appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983, and deposited to the permanent fund pursuant to section 17-5-704, MCA.

15 September 1988

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

Dear Ms. Feaver:

You have asked for my opinion on the following question:

May the Legislature appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983, and deposited to the permanent fund pursuant to section 17-5-704, MCA?

Article IX, section 5 of the Montana Constitution requires that at least 50 percent of the coal severance tax be dedicated to a trust fund. The interest and income from the trust fund may be appropriated, but the principal must "forever remain inviolate" unless appropriated by a vote of three-fourths of the members of each house of the Legislature.

The statutory procedure for depositing money in the trust fund is set forth in sections 17-5-703 and 17-5-704, MCA. The trust fund is actually composed of three funds: a bond fund, a permanent fund, and an income fund. Except for amounts necessary to meet coal severance tax bond payments, the principal is deposited in the permanent fund. § 17-5-703, MCA. Money in all three funds is to be invested with a fixed portion of the investment income to be deposited in the permanent fund. § 17-5-704, MCA. It is this deposit of a portion of the investment income which gives rise to your inquiry.

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The Legislature first provided that, beginning in 1983, 15 percent of the income and earnings from the three funds must be appropriated and deposited in the permanent fund. Senate Bill 409, ch. 505, 1981 Mont. Laws. During the 1987 legislative session, the statute was amended to require that only 2 percent of the income from the three funds be deposited in the permanent fund for the period July 1, 1987, through June 30, 1988. On July 1, 1989, the rate will return to 15 percent. The statute has always required that this money may not be appropriated without a three-fourths vote of each house of the Legislature, tracking the constitutionally-required three-fourths vote needed to appropriate the trust fund principal. Mont. Const. Art. IX, § 5. Your question is whether a simple majority vote or a three-fourths vote of the Legislature is required to appropriate the income that has been deposited in the permanent fund. The answer turns upon whether the income deposited in the permanent fund under section 17-5-704, MCA, becomes a part of the principal of the trust.

In the construction of a statute, the intention of the Legislature is to be pursued if possible. § 1-2-102, MCA. The clear intent of the Legislature in providing that a percentage of the trust income be appropriated and deposited to the permanent fund was that the deposited investment income be treated as principal. The discussion of Senate Bill 409 reflected in the minutes of the meeting of the Select Committee on Water, April 2, 1981, indicates that the permanent fund was intended as a repository for the principal of the trust. A portion of the trust income and earnings was to be deposited in the permanent fund to replace any of the principal lost due to debt service on severance tax bonds. Id., testimony of Leo Berry.

The income deposited in the permanent fund, by virtue of its becoming a part of the principal, must remain inviolate unless appropriated by a three-fourths vote of the Legislature. Mont. Const. Art. IX, § 5. The three-fourths vote required by section 17-5-704(3), MCA, to appropriate the income deposited in the permanent fund is consistent, but unnecessary language since the Constitution already requires a supermajority vote to appropriate the principal.

I note that the Constitution contemplates that acts of the Legislature require a simple majority vote, unless otherwise specified in the Constitution itself. Mont. Const. Art. V, § 11(1). Thus, for example, the Legislature could, by a simple majority vote, increase beyond 50 percent the portion of coal severance tax that

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is dedicated to the trust fund. Moreover, the authority given to the Legislature under Article IX, section 5 of

the Montana Constitution to appropriate the interest and income from the trust fund may be exercised by a simple majority vote. The Legislature exercised this authority when it enacted section 17-5-704, MCA, requiring a fixed portion of the interest to be appropriated and deposited in the permanent fund. By the same token, the Legislature could amend or repeal this section by a simple majority vote. It is for this reason that section 17-5-704, MCA, does not violate the general rule that the act of one Legislature may not restrict the power of subsequent Legislatures. See Am. Jur. 2d States § 40 (1974).

THEREFORE, IT IS MY OPINION:

The Legislature may not appropriate by a simple majority vote the income and interest earned on the coal severance tax trust fund since July 1, 1983, and deposited to the permanent fund pursuant to section 17-5-704, MCA.

Very truly yours,

MIKE GREELY
Attorney General