

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 118

COUNTIES - County poor fund;
COUNTY GOVERNMENT - County poor fund;
LOCAL GOVERNMENT - County poor fund;
PUBLIC ASSISTANCE - County reimbursement of Department
of Social and Rehabilitation Services;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF -
County reimbursement for public assistance;
TAXATION AND REVENUE - Exhaustion of county poor fund,
mill levy limitations;
MONTANA CODE ANNOTATED - Sections 15-1-101(2),
15-10-401, 15-10-402, 15-10-412, 53-2-304, 53-2-321 to
53-2-323, 53-2-610, 53-4-246;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No.
113 (1988), 42 Op. Att'y Gen. No. 80 (1988).

- HELD: 1. A county must make the payments mandated by
sections 53-2-304(2) and (3), 53-2-322,
53-2-610, and 53-4-246, MCA, even if its
county poor fund is exhausted.
2. These payments must be made by the county even
if the deficiency in the poor fund resulted
from inaccurate data on projected expenses
provided by the county welfare director.
3. In light of Initiative No. 105, imposing an
additional levy to meet a shortfall in the
county poor fund requires either that the poor
fund liability be reduced to a judgment
against the county, or that the county
commissioners pass a resolution pursuant to

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section 15-10-412(9), MCA, followed by a special or general election in which the issue of increased property tax liability is presented to the voters.

4. When budgeting for the next fiscal year, the levy for the county general fund may be decreased and the levy for the county poor fund increased as long as the resultant total tax liability for individual property in the county is not increased above 1986 levels.

24 October 1988

Gail Gray, Director
Department of Social and
Rehabilitation Services
Room 301, SRS Building
111 Sanders
Helena MT 59620

Dear Ms. Gray:

You have requested my opinion concerning reimbursement of the Department of Social and Rehabilitation Services (SRS) by a county for administrative costs of public assistance activities and the county's proportionate share of any other public assistance activity carried on jointly by the state and the county. I have rephrased your questions as follows:

1. Must a county make payments as mandated by sections 53-2-304(2) and (3), 53-2-322, 53-2-610, and 53-4-246, MCA, even if it has exhausted its poor fund?
2. Must a county make the above payments if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director?
3. If a county must make the payments, what procedure may be used to impose additional levies, in light of sections 15-10-401 and 15-10-402, MCA (Initiative No. 105, 1986)?
4. May a county, when budgeting for the next fiscal year, increase its levy for the county poor fund and decrease its levy

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for the general fund, as long as the resulting total tax liability for the individual property in the county is not increased above 1986 levels?

From your letter I understand that Musselshell County has refused to reimburse SRS for costs associated with the care of indigents in the county because expenditures have exceeded the 3.03 mills levied for the county poor fund. Musselshell County levied 3.03 mills for the county poor fund in 1986. The county commissioners and county attorney contend that Initiative No. 105 (1986) prohibits them from expending moneys beyond the original levy, and they also claim that the deficient levy resulted from neglect or error of the county welfare director. Musselshell County has neither self-government powers nor a state-assumed welfare service.

Pursuant to section 53-2-321, MCA, the board of county commissioners has jurisdiction and power under the limitations and restrictions prescribed by law to provide care for the indigent sick or the otherwise dependent poor of the county. For these purposes, the board of county commissioners is authorized to levy and collect annually a tax on property not exceeding 13.5 mills for the county poor fund. §§ 53-2-321, 53-2-322(1), MCA.

The board of county commissioners is required to budget and expend as much of the funds in the county poor fund as will enable the county welfare department to pay the general relief activities of the county and reimburse SRS for the "county's proportionate share of the administrative costs of the county welfare department and of all public assistance," and the county's share of "any other public assistance activity that may be carried on jointly by the state and the county." §§ 53-2-304(2) and (3), 53-2-322, 53-2-610, 53-4-246, MCA. The amounts set up in the budget for reimbursement to SRS must be sufficient to make all the reimbursements in full. § 53-2-322(3), MCA. SRS must review the proposed county budget and it may recommend changes in any part of the budget relating to the county poor fund. § 53-2-322(4), (5), MCA. The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing SRS without first obtaining a written statement from SRS to the effect that the amount to be transferred will not be required during the fiscal year for the purposes provided in the budget. § 53-2-322(6), MCA. There are also statutory restrictions on the use of any money from the county poor fund for the erection or improvement of any county building. § 53-2-322(7), MCA.

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The county's obligation to make expenditures required by law is not negated by the fact that the county poor fund has been exhausted. There are provisions in the statutes for increasing a county poor fund over the budgeted level, even in light of Initiative No. 105 (1986) or for obtaining state grants-in-aid if all lawful sources of revenue to the county poor fund have been exhausted, and all of the conditions of section 53-2-323, MCA, have been met. See 42 Op. Att'y Gen. No. 113 (1988) (maximum poor fund levy may be assessed in light of Initiative No. 105, pursuant to section 15-10-412(8)(f) or section 15-10-412(9), MCA). I therefore conclude that the county must make the payments mandated by sections 53-2-304(2) and (3), 53-2-322, 53-2-610, and 53-4-246, MCA, even if the county poor fund is exhausted.

Your second question is whether the county must make the above-discussed payments if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director. It is disputed whether the director is actually a state or county employee, but, for purposes of this opinion, you have asked me to assume the director is a state employee. As outlined above, the state, through SRS, clearly participates in the county budgeting process regarding the county poor fund. The involvement of SRS is apparently designed to avoid the type of shortfall found in Musselshell County. However, I find no statutory authority for the proposition that a shortfall in the county poor fund resulting from erroneous information supplied by the county welfare director, even if she is an employee of SRS, somehow relieves the county of its mandatory duty to reimburse the state for the administrative costs of public assistance and its proper share of public assistance activities.

Your third question is: If the county must make public assistance reimbursements, what procedures may it use to impose additional levies to meet this year's shortfall? This question is answered in my recent opinion, 42 Op. Att'y Gen. No. 113 (1988). An emergency state grant-in-aid is not available to the county at this time because it has not exhausted all lawful sources of revenue to the county poor fund. § 53-2-323, MCA; 42 Op. Att'y Gen. No. 113 (1988). Although sections 15-10-401 to 412, MCA, substantially limit the authority of taxing units to increase a property taxpayer's liability over his 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county, see § 15-10-412(8)(f), MCA, or the county commissioners have passed a resolution pursuant

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to section 15-10-412(9), MCA. 42 Op. Att'y Gen. No. 113 (1988). Passage of a resolution under section 15-10-712(9), MCA, must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization.

Finally, you have specifically asked me if the county may, when budgeting for the next fiscal year, decrease its levy for the county general fund and increase its levy for the county poor fund. The provisions limiting property taxes focus on taxing units or jurisdictions; they limit the amount of taxes which may be assessed on property in each taxing unit or jurisdiction. §§ 15-10-402, 15-10-412(5), MCA; 42 Op. Att'y Gen. No. 80 (1988). The county is a taxing unit. § 15-1-101(2), MCA.

Section 15-10-412(2), MCA, provides:

The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit.

Thus, I conclude that the county, when budgeting for the next fiscal year, may decrease the levy for the county general fund and increase the levy for the county poor fund as long as the resultant total tax liability for the individual property in the county is not increased above 1986 levels.

THEREFORE, IT IS MY OPINION:

1. A county must make the payments mandated by sections 53-2-304(2) and (3), 53-2-322, 53-2-610, and 53-4-246, MCA, even if its county poor fund is exhausted.
2. These payments must be made by the county even if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director.
3. In light of Initiative No. 105, imposing an additional levy to meet a shortfall in the county poor fund requires either that the poor fund liability be reduced to a judgment

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against the county, or that the county commissioners pass a resolution pursuant to section 15-10-412(9), MCA, followed by a special or general election in which the issue of increased property tax liability is presented to the voters.

4. When budgeting for the next fiscal year, the levy for the county general fund may be decreased and the levy for the county poor fund increased as long as the resultant total tax liability for individual property in the county is not increased above 1986 levels.

Very truly yours,

MIKE GREELY
Attorney General