

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 14

COUNTIES - County treasurer as custodian of irrigation district revenues;

COUNTY OFFICERS AND EMPLOYEES - County treasurer as custodian of irrigation district revenues;

PROPERTY, REAL - Assessment and payment of irrigation district taxes;

TAXATION AND REVENUE - Assessment and payment of irrigation district taxes;

MONTANA CODE ANNOTATED - Sections 15-16-104, 85-7-1501, 85-7-1702, 85-7-1902, 85-7-2012, 85-7-2101, 85-7-2104, 85-7-2133, 85-7-2136, 85-7-2151, 85-7-2155, 85-7-2157 to 85-7-2159, 85-7-2163;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 45 (1984).

- HELD: 1. The board of commissioners of an irrigation district may not, even with the consent of all water users within the district, bypass the annual tax levy procedure in section 85-7-2104, MCA, and directly assess those water users' lands for amounts otherwise subject to levy under such provision.
2. The county treasurer may issue receipts of payment for those amounts levied under section 85-7-2104, MCA, but remitted directly to the board of commissioners of an irrigation district upon appropriate certification by the district of such payments. However, the practice of direct payments to the commissioners must terminate, and all unexpended monies so received must be remitted to the county treasurer for deposit and supervision.

OPINIONS OF THE ATTORNEY GENERAL

21 April 1987

John T. Flynn
Broadwater County Attorney
Broadwater County Courthouse
Townsend MT 59644

Dear Mr. Flynn:

You have requested my opinion concerning the following questions:

1. May the board of commissioners of an irrigation district, with the consent of all water users within the district, opt to apportion the amounts authorized by section 85-7-2104, MCA, to be collected through an annual tax levy and directly bill the water users for their apportioned amounts in lieu of the tax levy and thereafter pay the expenses and obligations of the district themselves rather than directing the county treasurer to make such payments?
2. If water users within an irrigation district tender annual taxes levied under section 85-7-2104, MCA, directly to the board of commissioners of an irrigation district and not to the county treasurer, may the county treasurer issue a receipt of payment for such taxes upon verification from the irrigation district that the taxes have been paid?

I conclude that the tax assessment provisions in section 85-7-2104, MCA, are mandatory in nature and that an irrigation district board of commissioners is not authorized to substitute the direct payment system suggested in your first question for the statutory procedure. With reference to your second question, I conclude that the county treasurer may issue receipts for tax payments made directly to the board of commissioners although the practice of such payments should cease.

Irrigation districts have long been recognized as constituting "public corporations ... with such powers and authority as may be found in the law." State ex rel. Blenkner v. Stillwater County, 104 Mont. 387, 392, 66 P.2d 788, 791 (1937). Accord In re Gallatin Irrigation District, 48 Mont. 605, 609, 140 P. 92, 93

OPINIONS OF THE ATTORNEY GENERAL

(1914). They are administered by elected boards of commissioners. See §§ 85-7-1051, 85-7-1702, 85-7-1902, MCA. A board's powers are broad and include the authority to "require the prompt payment of all current and delinquent taxes and assessments and other financial obligations owing the district as a prerequisite to water service." § 85-7-1902(4), MCA. Revenue necessary for a district's operations is raised through the issuance of bonds, special taxes or assessments, and annual tax levies. §§ 85-7-2012, 85-7-2101, 85-7-2104, MCA. See Cosman v. Chestnut Valley Irrigation District, 74 Mont. 111, 117, 238 P. 879, 881 (1925).

The commissioners forward annually to the Department of Revenue a list of all district lands, together with the total amount of taxes or assessments against those lands. § 85-7-2136(1), MCA. The taxes or assessments are thereafter entered into the county treasurer's assessment book and collected in a manner similar to real property taxes. § 85-7-2136(1) and (2), MCA. Detailed provisions govern the sale of lands struck off to the county for delinquent district taxes or assessments and the landowner's right of redemption. §§ 85-7-2151, 85-7-2155, 85-7-2157 to 2159, 85-7-2163, MCA.

The comprehensive procedures controlling the methods by which irrigation district revenue may be raised reflect a legislative determination that such procedures be exclusive; i.e., districts are not authorized to substitute alternative methods for those statutorily prescribed. The provisions in section 85-7-2104(1), MCA, are thus mandatory in nature, requiring the commissioners on or before the second Monday in July each year to "ascertain the total amount required to be raised in that year for the general administrative expenses of the district ... and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district" and to levy such amounts against the land within the district. While the commissioners are given substantial authority in administering the district's affairs, there is no basis upon which to conclude that they are vested with the power to circumvent these carefully structured statutory mechanisms for assessing and collecting monies essential to the district's maintenance. Consequently, your first question must be answered negatively.

Your second question presents the situation in which annual tax levies under section 85-7-2104, MCA, have been remitted directly to the commissioners and not the county treasurer. Such a procedure is inconsistent with

OPINIONS OF THE ATTORNEY GENERAL

section 85-7-2133(2), MCA, which provides in part that "[t]he county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district." It is further inconsistent with the comprehensive statutory taxation and levying procedure described above and could well complicate determination of when delinquencies exist and subsequent proceedings to enforce tax liens against assessed lands. As to tax levies directly received by the commissioners, the county treasurer should be notified of the taxpayer's name, the description of the assessed property, the amount paid, the date of the payment's receipt and, if mailed, the date of the payment's mailing. The treasurer should then issue a receipt pursuant to section 15-16-104, MCA, indicating the amount of payment. See 40 Op. Att'y Gen. No. 45 at 180, 182-83 (1984). The commissioners should, of course, terminate the practice of directly accepting payments and notify district water users of their obligation to remit the payments to the county treasurer. Finally, I note that, because the county treasurer is the custodian of the irrigation district's funds, any unexpended monies directly received by the commissioners should be remitted to the treasurer for appropriate deposit and supervision.

THEREFORE, IT IS MY OPINION:

1. The board of commissioners of an irrigation district may not, even with the consent of all water users within the district, bypass the annual tax levy procedure in section 85-7-2104, MCA, and directly assess those water users' lands for amounts otherwise subject to levy under such provision.
2. The county treasurer may issue receipts of payment for those amounts levied under section 85-7-2104, MCA, but remitted directly to the board of commissioners of an irrigation district upon appropriate certification by the district of such payments. However, the practice of direct payments to the commissioners must terminate, and all unexpended monies so received must be remitted to the county treasurer for deposit and supervision.

Very truly yours,

MIKE GREELY
Attorney General