

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 18

COUNTIES - Levy of property taxes and issuance of bonds to pay tax protest refunds;

TAXATION AND REVENUE - Levy of property taxes and issuance of bonds to pay tax protest refunds;

MONTANA CODE ANNOTATED - Sections 7-6-2501, 7-6-2531, 7-7-2201, 7-7-2221, 7-7-2501(1), 15-1-402(8), 15-1-402(9);

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 34 (1981).

- HELD: 1. Voter approval is not required before a county may collect a special tax protest refund levy.
2. Voter approval is necessary before a county may issue and sell bonds for the purpose of making tax protest refunds.

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21 May 1987

Ted L. Mizner
Powell County Attorney
Powell County Courthouse
Deer Lodge MT 59722

Dear Mr. Mizner:

You have asked my opinion on the following question:

Is voter approval necessary when a county imposes a special levy or issues bonds for the purpose of paying tax protest refunds?

Refunds of taxes paid under protest must be made when a protest action is decided adversely to the taxing jurisdiction. § 15-1-402(8), MCA. In June 1986 the Legislature authorized taxing jurisdictions to use funds from several sources for the purpose of paying tax protest refunds.

(9) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds may not exceed, in the aggregate, 10 mills annually.

§ 15-1-402(9), MCA.

With respect to the collection of a special tax protest refund levy pursuant to subsection (9)(a), section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental

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expenses of the county. This limitation may not be exceeded without voter approval. § 7-6-2531, MCA. Thus, the first part of your question concerning whether imposition of a special levy requires voter approval depends upon whether the levy is subject to the limitation set forth in section 7-6-2501, MCA.

I concluded in 39 Op. Att'y Gen. No. 34 at 135 (1981), that section 7-6-2501, MCA, does not limit a county's power to levy additional taxes authorized by statute for special purposes. Accord 16 McQuillin, Municipal Corporations § 44.29 (1984). Similarly, the special levy authorized by section 15-1-402(9)(a), MCA, would not be subject to the limits of section 7-6-2501, MCA. The voter approval requirements of section 7-6-2531, MCA, do not apply to the special tax protest refund levy.

The second part of your inquiry concerns the issuance and sale of bonds authorized by section 15-1-402(9)(c), MCA. Whether voter approval is required before bonds may be issued depends upon the type of bond under consideration. The bonds described in subsection (9)(c) are general obligation bonds, i.e., bonds secured by funds raised by taxation, as contrasted with county revenue bonds, which are backed by income from the project constructed with the proceeds of the bond issue. See §§ 7-7-2201, 7-7-2501(1), MCA; 15 McQuillin, Municipal Corporations §§ 43.05, 43.11 (1985).

County general obligation bonds must be approved by the voters before issuance. Certain exceptions to the voter approval requirement are set forth in section 7-7-2221, MCA; bonds issued for the purpose of paying tax protest refunds are not, however, an exception to the rule. Therefore, the election requirements for the issuance and sale of county general obligation bonds apply to those bonds issued pursuant to section 15-1-402(9)(c), MCA.

THEREFORE, IT IS MY OPINION:

1. Voter approval is not required before a county may collect a special tax protest refund levy.
2. Voter approval is necessary before a county may issue and sell bonds for the purpose of making tax protest refunds.

Very truly yours,

MIKE GREELY
Attorney General