

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 30

LEGISLATURE - Authority to pass 1987 Montana Laws, chapter 664;

LOCAL GOVERNMENT - Initiative No. 105 and 1987 Montana Laws, chapter 654 not repealed by 1987 Montana Laws, chapter 664;

STATUTES - Relationship between Initiative No. 105, 1987 Montana Laws, chapters 654 and 664, and sections 1-2-112 and 1-2-113, MCA;

WORKERS' COMPENSATION - Authority of Legislature to increase employer's payroll tax;

MONTANA CODE ANNOTATED - Sections 1-2-112, 1-2-113, 15-10-411, 15-10-412, 17-7-502, 39-71-2501 to 39-71-2504;

MONTANA LAWS OF 1987 - Chapters 654, 664;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987).

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- HELD: 1. The Legislature had the authority to pass 1987 Montana Laws, chapter 664 without giving local governments the ability to raise new revenues to pay for that liability.
2. Local governments must meet the requirements of both 1987 Montana Laws, chapter 664 and 1987 Montana Laws, chapter 654.

6 October 1987

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Gentlemen:

You have requested an opinion concerning:

1. Does the Legislature have the authority to impose a monetary obligation upon municipal and county governments without giving those governments the ability to raise revenue to pay for this liability?
2. If imposition of the monetary obligation is permissible, can municipalities and counties levy additional taxes to pay for this liability without reference to 1987 Montana Laws, chapter 654?

In the material accompanying your opinion request, you frame these questions in terms of House Bill 884 of the 1987 Montana Legislature (1987 Mont. Laws, ch. 664). That bill provided a supplemental funding source to cover the unfunded liability of the state workers' compensation insurance fund through an employer's payroll tax. I will answer your questions in the context of that Act.

Addressing your first question, I find no requirement in the Montana Constitution that the Legislature must provide local governments with a means of raising the revenue necessary to pay for new liabilities which it imposes on them. Such a requirement is found in

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sections 1-2-112 and 1-2-113, MCA, which apply to legislated expenditures which must be made by local governments and school districts, respectively. Those statutes state the following:

Statutes imposing new local government duties.

(1) Any law enacted by the legislature after July 1, 1979, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs and if financing is provided by remission of funds by the state of Montana, the remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

§ 1-2-112, MCA.

Statutes imposing new duties on a school district to provide means of financing.

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(1) Any law enacted by the legislature after July 1, 1981, except any law implementing a federal law or a court decision, that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds shall provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance such a service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No legislation passed and approved after October 1, 1981, supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

§ 1-2-113, MCA.

Examination of the legislative history of 1987 Montana Laws, chapter 664 reveals that the Legislature took the limitations of section 1-2-112, MCA, into account when it considered this bill. Minutes of the Senate Labor and Employment Committee, April 7, 1987, at 6. Subsection (4) of section 1-2-112, MCA, provides:

This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

As 1987 Montana Laws, chapter 664 says in pertinent part:

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The purpose of this act is to provide a supplemental source of financing for the unfunded liability.

1987 Mont. Laws ch. 664, § 2(3). Since counties and municipalities are only one subgroup of the employers affected by the Act, it is clear that the required expenditure of additional funds by counties and municipalities is incidental to the main purpose of 1987 Montana Laws, chapter 664.

I conclude that the Legislature was correct in believing that section 1-2-112(4), MCA, rendered that statute inapplicable to 1987 Montana Laws, chapter 664. I find no other limitations on the Legislature that would prevent it from passing House Bill 884 without giving local governments the ability to raise revenue to pay the increased liability.

Your second question implicitly addresses the relationship between House Bill 884 and 1987 Montana Laws, chapter 654 (Senate Bill 71) and asks whether House Bill 884 amended or repealed Senate Bill 71 by implication. As I said recently in 42 Op. Att'y Gen. No. 21 (1987):

Amendment or repeal by implication is not favored in Montana. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). State ex rel. Mallott v. Board of Commissioners, 89 Mont. 37, 76, 296 P. 1, 11 (1930). The Montana Supreme Court has set the following standards for implied repeals:

"We have said of implied repeals, in Box v. Duncan, 98 Mont. 216, 38 P.2d 986, 987: 'To make tenable the claim that an earlier statute was repealed by a later one, the two acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view.'"

Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Bennett, 145 Mont. 191, 195, 399 P.2d 986, 988 (1965). Thus, this and other cases establish a three-part test for repeal by implication: (1) The two acts must relate to the same subject; (2) the two acts must have the same object in view; and (3) the two acts must be plainly and irreconcilably in conflict. All three parts of the test must be met.

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Applying this three-part test, I find that none of its elements is met here. Local governments must satisfy the requirements of both House Bill 884 and Senate Bill 71. As I also said in 42 Op. Att'y Gen. No. 21:

Local officials may necessarily have to reduce discretionary projects in order to perform duties that are statutorily required, but that was the case before I-105 or SB 71 and it remains so now.

THEREFORE, IT IS MY OPINION:

1. The Legislature had the authority to pass 1987 Montana Laws, chapter 664 without giving local governments the ability to raise new revenues to pay for that liability.
2. Local governments must meet the requirements of both 1987 Montana Laws, chapter 664 and 1987 Montana Laws, chapter 654.

Very truly yours,

MIKE GREELY
Attorney General