

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 54

COUNTIES - Publication of annual statement of financial condition;
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-5-2123, 7-5-2123(1)(b);
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 77 (1982);
MONTANA LAWS OF 1985 - Chapter 193, section 1.

HELD: The county clerk's annual statement of financial condition must be published annually in a newspaper in full. It may not be published in summary form or by reference.

11 January 1988

Arnie A. Hove
McCone County Attorney
McCone County Courthouse
Circle MT 59215

Dear Mr. Hove:

You have requested my opinion on the following question:

Whether the county clerk's annual statement of the county's financial condition may be published in a newspaper in summary form by reference, or whether it must be published in full.

The pertinent statute is section 7-5-2123, MCA, which reads:

Publication of board proceedings and annual financial statement. (1) The board of county commissioners has jurisdiction and power,

OPINIONS OF THE ATTORNEY GENERAL

under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annual, the county clerk's annual statement of the financial condition of the county.

(2) publication in full, in summary, or by reference of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

In 1985, subsections (1)(a) and (2) were amended, in chapter 193, section 1. Prior to the amendment subsection (1)(a) read:

[A]t the adjournment of each session of the board, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings[.]

Subsection (2) read in part:

Publication of such minutes and records of proceedings must be made within 21 days after adjournment of the session.

The effect of the 1985 amendment was to enable the board of county commissioners to publish in a newspaper in summary form or by reference, claims ordered paid by the county, which prior to the amendment had to be published in full. It did not expand the commissioners' authority to publish the annual financial statement in summary form or by reference. See Minutes of Local Government

OPINIONS OF THE ATTORNEY GENERAL

Committee, hearing on House Bill 379, Feb. 7, 1985; (Rep. Garcia, sponsor, stated that the bill provides optional publication requirements for the minutes and the claims ordered paid by boards of county commissioners).

Section 7-5-2123(1)(b), MCA, which provides for annual publication of "the county clerk's annual statement of the financial condition of the county," was not affected by the 1985 legislation. There is no language in the statute that permits the county commissioners to summarize or publish by reference the annual financial statement. The rules of statutory construction require me to ascertain and declare the terms and substance of the statute, and in doing so I may not insert what has been omitted or omit what has been inserted therein, § 1-2-101, MCA; Chennault v. Sager, 187 Mont. 455, 610 P.2d 173, 176 (1980). If the Legislature had intended to extend the commissioners' authority to summarize the annual financial statement or publish it by reference, it would have done so. I therefore conclude that the county commissioners may not publish the county's annual financial statement in summary form or by reference.

Finally, it should be noted that in 39 Op. Att'y Gen. No. 77 at 296 (1982), I held that the language of section 7-5-2123, MCA, is mandatory rather than directory. My holding was based on the rationale that taxpayers of the county are entitled to know, by such publications, how, for whom, and for what their tax money is being spent. I also noted the public policy to give broad public exposure to matters pertaining to the expenditure of public money. The board of county commissioners is thus obligated to publish in full the county's annual financial statement.

THEREFORE, IT IS MY OPINION:

The county clerk's annual statement of financial condition must be published annually in a newspaper in full. It may not be published in summary form or by reference.

Very truly yours,

MIKE GREELY
Attorney General