

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 65

APPROPRIATIONS - Moneys for salary increases arising under collective bargaining agreements;
CITIES AND TOWNS - What constitutes transfer or salary increase in excess of appropriated amounts under section 7-6-4236, MCA;
LABOR RELATIONS - Municipal appropriations for salary increases arising under collective bargaining agreements;
MUNICIPAL GOVERNMENT - What constitutes transfer or salary increase in excess of appropriated amounts under section 7-6-4236, MCA;
SALARIES - What constitutes increase in excess of appropriated amounts under section 7-6-4236, MCA;
MONTANA CODE ANNOTATED - Title 7, chapter 6, part 42; sections 7-6-4221, 7-6-4224 to 7-6-4228, 7-6-4231, 7-6-4235, 7-6-4236, 7-6-4251, 7-6-4252, 39-31-208;
MONTANA LAWS OF 1931 - Chapter 121.

HELD: Section 7-6-4236, MCA, does not prohibit a municipality from using funds separately appropriated for the purpose of satisfying salary increases which may arise from collective bargaining negotiations ongoing at the time of a final budget's adoption to pay such increases.

17 February 1988

Jim Nugent
Missoula City Attorney
291 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning the following question:

Does section 7-6-4236, MCA, prohibit use of funds within a separately appropriated account established for the purpose of satisfying salary increases which may arise from collective bargaining negotiations ongoing at the time of a final budget's adoption to pay such increases?

I conclude that use of such funds to pay the collectively bargained salary increases constitutes neither a "transfer" within the scope of section

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7-6-4236, MCA, nor an increase in affected employees' salaries over amounts appropriated for those salaries.

The City of Missoula is a party to eight collective bargaining agreements with labor organizations certified under section 39-31-208, MCA, as the representative of certain groups of the City's employees. All agreements presently have a duration of one or two years, and all commence on July 1. Various of these agreements were the subject of collective bargaining negotiations last summer, and some of the negotiations extended beyond the date by which the City's final budget for fiscal year 1988 was required to be completed. See §§ 7-6-4226 to 4232, MCA. In anticipation that the negotiations would likely result in fiscal year 1988 salary increases, the city council included within the final budget an appropriation for such possible increases. The appropriated moneys were placed within the "wages and salaries" classification of either a general nondepartmental account or, in two instances, a specific departmental account, and their purpose was expressly identified. The funds have been used exclusively to satisfy salary increases provided under collective bargaining agreements entered into after adoption of the final budget. The City's auditors have questioned whether this use of the funds contravenes the prohibition in section 7-6-4236, MCA, against intra-classification transfer of moneys whose effect is to increase a salary above the amount appropriated therefor.

The basic framework of the municipal budget process in chapter 7, part 42 was established in 1931. 1931 Mont. Laws, ch. 121. In summary, these provisions, as amended, require various municipal officials to submit to the city clerk by July 10, on Department of Commerce forms, estimates of expenditures which will occur during the fiscal year and of revenue which will be received. § 7-6-4221, MCA. The clerk thereafter prepares from these estimates a tabulation "showing the complete expenditure program of the municipality for the current fiscal year and the sources of revenue by which it is to be financed." § 7-6-4224(1), MCA. The tabulation's estimated expenditures must be classified under one of six categories which include, most importantly, "salaries and wages." § 7-6-4225(1)(a), MCA. This tabulation must be presented to the municipal council or commission by July 20, which has until July 25 to make any changes it deems appropriate. § 7-6-4226, MCA. The tabulation, together with any amendments by the municipal governing body, constitutes the city's preliminary budget. § 7-6-4226(2), MCA. Notice that the preliminary budget has been fixed is then published,

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and a public hearing concerning the budget must take place on the Wednesday preceding the second Monday in August. §§ 7-6-4227, 7-6-4228, MCA. Following the hearing a final budget is approved. § 7-6-4231, MCA.

Once adopted, final budgets can be modified only under limited circumstances. Section 7-6-4231(3) and (4), MCA, permits reductions in appropriated amounts when revenue shortfalls occur or when savings arise from unanticipated adjustments in projected expenditures. Sections 7-6-4251 and 7-6-4252, MCA, provide procedures for additional expenditures because of public emergencies. Municipal officials are otherwise "limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications" (§ 7-6-4235(2), MCA) except that, "[u]pon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within or among the general class or classes of salaries and wages, maintenance and support, and capital outlay may be made, provided that no salary shall be increased above the amount appropriated therefor" (§ 7-6-4236, MCA). Consequently, before section 7-6-4236, MCA, can be deemed to proscribe the City's practice here, there must be a transfer of moneys within or among expenditure classifications and such transfer must result in a salary increase "above the amount appropriated therefor." Neither a transfer nor a prohibited salary increase, however, has occurred.

First, a transfer under section 7-6-4236, MCA, is presumably effected only when moneys appropriated for one purpose are used for another. Presently, though, the funds have been specifically appropriated for the purpose of satisfying salary increases under collective bargaining agreements which, at the time of final budget approval, have not been consummated. That the funds, as a general matter, were not allocated in the final budget to a particular employee classification or departmental account does not mean a transfer under section 7-6-4236, MCA, must take place to use them since such an interpretation would essentially require a reappropriation of moneys for the same purpose to which they have already been appropriated. See State ex rel. Toomey v. State Board of Examiners, 74 Mont. 1, 7, 238 P. 316, 320 (1925) ("[t]he word 'appropriation' is defined by Webster as 'the act of setting apart or assigning to a particular use or person'"); accord State ex rel. Tipton v. Erickson, 93 Mont. 466, 472, 19 P.2d 227, 229 (1933) (per curiam). While the budget provisions are obviously designed to ensure that final budgets are adopted only after careful consideration and

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represent, to the greatest extent possible, the best estimate of the municipal governing body with respect to anticipated income and expenditures, the Legislature could not have intended to require needlessly redundant action by that governing body. See generally 4 C. Antieau, Local Government Law § 43.10 (1987) ("[t]he object of a county appropriation is to enable the taxpayers to compel the application of county funds to the purposes for which they were appropriated, to prevent the application of such funds to other purposes, and to prevent the expenditure of greater sums of money than necessary for legitimate county purposes"). Use of moneys from the appropriation at issue is thus no different from use of funds set aside for overtime payments--funds which ordinarily cannot be allocated to a specific employee classification in a final budget because of the uncertainty associated with the need for or distribution of overtime work during the fiscal year. No question exists, of course, as to the inapplicability of section 7-6-4236, MCA, to utilization of such overtime compensation appropriations.

Second, even if a transfer subject to section 7-6-4236, MCA, is deemed to have occurred, the salary expenditure is not in excess of appropriated amounts. As stated above, the purpose of an appropriation is to provide funds for a particular use during a specified period. Here the city council has appropriated moneys to be devoted solely to payment of salaries whose amounts are, in most instances, known but, in others, contingent upon the outcome of ongoing collective bargaining negotiations. That the precise salary of a given employee classification cannot be identified until completion of those negotiations does not affect either the validity of the appropriation from which the additional compensation increases will be paid or result in a salary increase "above the amount appropriated therefor." See generally 15 McQuillin Municipal Corporations § 39.66 (1985 rev. ed.) ("appropriations for contingent expenses in several departments of a city, which are small when considered in connection with the total appropriations, and which appear reasonable in amount, will not be held invalid because not more particularly itemized") (footnote omitted). Nothing in the statutes prohibits a municipality from raising an employee's rate of compensation to the extent moneys have been properly earmarked for such use. In this latter regard, it must be emphasized that section 7-6-4236, MCA, does not proscribe salary increases: It instead only limits the amount which may be paid to a particular employee classification to that appropriated for such purpose. Use of moneys from the separately appropriated fund here to pay salary increases arising

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under collective bargaining agreements negotiated after adoption of the final budget accordingly does not constitute a salary increase in excess of appropriated amounts.

THEREFORE, IT IS MY OPINION:

Section 7-6-4236, MCA, does not prohibit a municipality from using funds separately appropriated for the purpose of satisfying salary increases which may arise from collective bargaining negotiations ongoing at the time of a final budget's adoption to pay such increases.

Very truly yours,

MIKE GREELY
Attorney General