

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 73

CONSERVATION DISTRICTS - Whether regular or special assessments are subject to property tax limitations;
PROPERTY, REAL - Whether regular or special assessments of conservation districts are subject to property tax limitations;

SOIL AND WATER CONSERVATION - Whether regular or special assessments of conservation districts are subject to property tax limitations;

TAXATION AND REVENUE - Whether regular or special assessments of conservation districts are subject to property tax limitations;

MONTANA CODE ANNOTATED - Sections 15-10-401 to 15-10-412, 15-10-402, 15-10-412, 76-15-101, 76-15-102, 76-15-215, 76-15-311, 76-15-401 to 76-15-411, 76-15-501, 76-15-506, 76-15-512, 76-15-514 to 76-15-516, 76-15-601, 76-15-606, 76-15-607, 76-15-609, 76-15-622, 76-15-623;
MONTANA LAWS OF 1987 - Chapter 654;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987); 39 Op. Att'y Gen. No. 38 (1981); 39 Op. Att'y Gen. No. 5 (1981); 37 Op. Att'y Gen. No. 76 (1977).

HELD: Regular and special assessments by conservation districts are subject to the property tax limitations in sections 15-10-401 to 412, MCA.

1 March 1988

Larry Fasbender, Director
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena MT 59620

Dear Mr. Fasbender:

You have requested my opinion concerning the following question:

Are regular and special assessments by conservation districts under sections 76-15-515 and 76-15-623, MCA, subject to the property tax limitations in sections 15-10-401 to 412, MCA?

I conclude that regular and special assessments by conservation districts are properly characterized as taxes and are therefore subject to the limitations in sections 15-10-401 to 412, MCA.

OPINIONS OF THE ATTORNEY GENERAL

Conservation districts are political subdivisions of the State whose general purpose is to protect soil within their boundaries from erosion. §§ 76-15-101, 76-15-102, 76-15-215, MCA; 39 Op. Att'y Gen. No. 38 at 152 (1981); 37 Op. Att'y Gen. No. 76 at 316 (1977). They are governed by boards of five or seven supervisors, which have broad powers to carry out the purposes for which the districts have been formed. E.g., §§ 76-15-311, 76-15-401 to 411, MCA. Among the boards' powers are the authority to issue bonds after elector approval to finance the district's operations, to charge fees for services, facilities, or materials furnished by the district, and to cause regular and special assessments to be levied by boards of county commissioners. §§ 76-15-501, 76-15-506, 76-15-514, MCA; 39 Op. Att'y Gen. No. 5 at 22 (1981).

Regular conservation district assessments may not exceed 1.5 mills and are levied against all taxable valuation within the district. § 76-15-515, MCA. Special assessments, in contrast, are levied against real property within specific "project areas" and can be utilized solely to finance the expenses of the involved project area. §§ 76-15-516(2), 76-15-622, 76-15-623, MCA. A project area may be established only after an affirmative vote of the electors within the proposed area and is created to implement a particular project benefiting the area. §§ 76-15-601, 76-15-606, 76-15-607, MCA. A project area may encompass all or part of one or more districts. § 76-15-609, MCA. The expenses associated with the project area need not be financed by special assessments but may, either in whole or part, be defrayed through regular assessments. § 76-15-622(1), MCA.

Initiative No. 105 (I-105), codified in sections 15-10-401 and 15-10-402, MCA, and 1987 Mont. Laws, chapter 654, codified in sections 15-10-411 and 15-10-412, MCA, substantially limit the authority of a "taxing jurisdiction" to increase the property tax liability of individual taxpayers over that amount levied for the 1986 tax year. See generally 42 Op. Att'y Gen. No. 21 (1987) (responding to broad range of questions concerning the proper application of I-105 and chapter 654). The term "taxing jurisdiction" is not defined but presumably means all entities which, under Montana law, may cause tax levies to be assessed against those classes of property to which the basic limitation in the initiative and the clarifying legislation applies. See § 15-10-402(1), MCA. Specifically excluded from the reach of I-105 and chapter 654 are rural improvement districts, special improvement districts, city street maintenance districts, and tax

OPINIONS OF THE ATTORNEY GENERAL

increment financing districts. §§ 15-10-402(2), 15-10-412(8), MCA. Conservation districts, however, are not exempted.

I held in 42 Op. Att'y Gen. No. 21 that I-105 and chapter 654 were intended only to affect property taxes and not special assessments. See generally Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957) (distinguishing between a "tax" and an "assessment"). At issue in that opinion were irrigation district assessments which, unlike those of conservation districts, are not based on the value of a taxpayer's property but are instead calculated to relate directly the amount assessed to the benefit bestowed. I concluded that those assessments were not property taxes subject to I-105 and chapter 654 and commented that other special district levies might be similarly classified. With respect to such levies, I said "[t]he central inquiry will ... normally be whether the purpose of the levy or assessment is to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits[.]" Id., slip op. at 6-7. Thus, as the Washington Supreme Court recently stated in Bellevue Associates v. City of Bellevue, 108 Wash. 2d 671, 741 P.2d 993, 996 (1987), special assessments "support construction of local improvements that are appurtenant to specific property and bring a benefit to that property substantially more intense than is conferred on other property.... There must be an actual, physical and material benefit to the land."

Neither the regular nor the special assessments of conservation districts may fairly be termed an "assessment" as that term was defined in Vail v. Custer County, supra, and used in 42 Op. Att'y Gen. No. 21. Regular conservation district assessments may thus be levied "to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program." § 76-15-512, MCA. Quite obviously, such "incidental expenses" will likely bear no relationship to particular benefits conferred upon particular parcels of land, and the costs attributable to any conservation practice loan programs are equally general, nonspecific expenses. Special conservation district assessments are also apportioned solely on the basis of real property valuation and without any manifested intent to relate directly the amount taxed to a benefit specially conferred upon the taxed property. Moreover, as developed above, conservation districts have authority under section 76-15-501(3), MCA, to charge for services performed or facilities provided, and I can only assume

OPINIONS OF THE ATTORNEY GENERAL

that, to the extent regular or special assessments are necessary to fund their operations, the need for the assessments derives either from costs which could not be directly attributed to a particular parcel of land or from a decision to apportion wholly or partially the expense of a benefit conferred upon such parcel throughout the entire district or project area. These levies are therefore taxes subject to the limitations in I-105 and chapter 654.

THEREFORE, IT IS MY OPINION:

Regular and special assessments by conservation districts are subject to the property tax limitations in sections 15-10-401 to 412, MCA.

Very truly yours,

MIKE GREELY
Attorney General