

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 80

CITIES AND TOWNS - Authority to contract with entities to provide fire protection outside city limits;

FIRE DISTRICTS - When constitute a "taxing unit" under Title 15, chapter 10, MCA;

TAXATION AND REVENUE - Application of property tax limitations in Title 15, chapter 10, part 4, MCA, to new taxing units;

MONTANA CODE ANNOTATED - Title 15, chapter 10, part 4; sections 1-2-101, 2-17-112, 7-5-4301, 7-33-2101, 7-33-2104, 7-33-2105, 7-33-2107, 7-33-2109, 7-33-4201, 15-10-402, 15-10-412;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 73 (1988), 42 Op. Att'y Gen. No. 21 (1987).

- HELD: 1. A rural fire district that is operated by a board of trustees is a "taxing unit" under Title 15, chapter 10, part 4, MCA.
2. The creation of a new taxing unit is not a "transfer of property into a taxing unit" under section 15-10-412, MCA.
3. The taxes levied on property in one taxing unit have no effect under Title 15,

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chapter 10, part 4, MCA, on the amount that may be levied by another taxing unit in which the same property is located.

4. A taxing unit created after 1986 is not subject to the tax limitations in Title 15, chapter 10, part 4, MCA.
5. A city may contract with entities to provide fire protection services outside the city limits.

4 May 1988

Representative Bob Marks
State House of Representatives
302 Lump Gulch
Clancy MT 59634

Dear Representative Marks:

You requested an opinion concerning several questions pertaining to fire districts:

1. May a fire district created under Title 7, chapter 33, part 21, levy taxes to fund the district operations in light of Title 15, chapter 10, part 4, MCA?
 - a. Is a fire district a "taxing unit" under Title 15, chapter 10, part 4, MCA?
 - b. Does the creation of a new taxing unit entail "transfer of property into a taxing unit" under section 15-10-412, MCA?
 - c. How do the taxes paid to a fire district affect the amount of taxes that could be collected by the county or another taxing unit in which the property is located?
 - d. If the fire district may levy taxes, is there any freeze applicable to taxes levied by that district since it did not exist in 1986?
2. May the City of Billings, through a contract between the city and a

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corporation, homeowners' association, or other entity, provide direct fire protection to areas outside of the city limits?

Title 7, chapter 33, part 21, MCA, authorizes the creation of rural fire districts in unincorporated areas, and their funding by the levy of an annual district-wide property tax. §§ 7-33-2101, 7-33-2109, MCA. Your first set of questions addresses the effect of recent legislation limiting property taxes on rural fire districts.

Initiative No. 105 (I-105) and chapter 654, 1987 Mont. Laws, are codified in Title 15, chapter 10, part 4, MCA, entitled "Limitation on Property Taxes." Those provisions generally limit the amount of property taxes which may be assessed upon individual taxpayers to the 1986 tax year level. See 42 Op. Att'y Gen. No. 21 (1987). Although there are specific exceptions to the property tax limitations, fire districts are not listed among them. § 15-10-412(8), MCA.

Section 7-33-2109, MCA, authorizes a property tax to be levied upon all property in the rural fire district. Since this tax levy is based on the value of the properties taxed, and benefits the entire fire district, it is the kind of tax that is subject to the limitations in Title 15, chapter 10, part 4, MCA. See 42 Op. Att'y Gen. No. 21 (1987) and 42 Op. Att'y Gen. No. 73 (1988), which discuss the distinction between assessments or user fees, which are not subject to the property tax limitation, and ad valorem property taxes levied to benefit the taxing jurisdiction as a whole.

You have asked if a rural fire district is a "taxing unit" within the meaning of section 15-10-412, MCA, which uses the term throughout. For example, subsection (2) provides: "The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year."

"Taxing unit" is defined in section 15-1-101(2), MCA, for all tax purposes:

The phrase ... "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district ... or any person, persons, or organized body authorized by law

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to establish tax levies for the purpose of raising public revenue. [Emphasis added.]

A rural fire district is established by the board of county commissioners of the county in which the district is located. § 7-33-2101, MCA. The board of county commissioners may either operate the fire district itself or appoint a board of trustees to operate the district. § 7-33-2104, MCA. When a board of trustees has been appointed, its duties include preparing the district's budget and determining the tax levy, which is collected by the county. §§ 7-33-2105, 7-33-2109, MCA. Clearly a rural fire district is a "taxing unit" when it is operated by a board of trustees. However, when a rural fire district is operated by the county commissioners, the applicability of the term "taxing unit" is less clear. Where the county commissioners and not the fire district itself establish the tax levy for the district, the definition of "taxing unit" does not encompass the fire district. A "taxing unit" entails an entity that establishes its own tax levy. In this situation, the board of county commissioners and not the fire district has this role. Thus, a fire district operated by the county and not by a board of trustees is not a "taxing unit." A rural fire district operated by a board of trustees, however, is a "taxing unit" within the meaning of section 15-10-412, MCA.

Your next question is whether the creation of a new taxing unit entails "transfer of property into a taxing unit" under section 15-10-412, MCA. I conclude that it does not. Section 15-10-412, MCA, provides that the limitation on property taxes to 1986 levels does not preclude an increase in total taxable valuation of a taxing unit or in actual tax liability on individual property as a result of, inter alia, "transfer of property into a taxing unit." § 15-10-412(3)(c), (4)(b), MCA. The rules of statutory construction require that the language of the statute be given their plain and ordinary meaning. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023, on rehearing, 622 P.2d 195 (1980). Transfer of property into a taxing unit presumes the existence of a unit into which property may be transferred. Since the rural fire district is newly created, there is no transfer of property into it at the time of its creation.

Your next question is whether taxes levied by a rural fire district created after 1986 affect the amount of taxes that may be levied by another taxing unit in which the same property is located. The provisions limiting property taxes focus on taxing units or jurisdictions; they limit the amount of taxes which may be assessed on

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property in each taxing unit or jurisdiction. §§ 15-10-402, 15-10-412(2), MCA. A property may be included in several taxing units or jurisdictions, and the amount taxed by one taxing unit or jurisdiction has no legal effect on an amount taxed by another.

Your next question is whether a rural fire district created after 1986 is subject to the limitations on property taxes, since it has no 1986 level to which it may limit its levy. I conclude that such district, established as a taxing unit, is not subject to the property tax limitations. Those provisions specifically limit the property tax levies to 1986 amounts. There is no provision for new taxing units to limit their levies to their first year of existence, or to 1986 amounts levied by another taxing unit. I cannot construe such a limitation on new taxing units where the Legislature has not done so. See § 1-2-101, MCA.

Your last question is whether the City of Billings, through a contract between the city and a corporation, homeowners' association, or other entity, can provide direct fire protection to areas outside the city limits.

The statutes that regulate fire protection in the State of Montana are found in Title 7, chapter 33, MCA. Section 7-33-4201, MCA, sets forth the general authority of a city council to establish a fire department and to prescribe its duties. The city's ability to enter into agreements in furtherance of this power is established in section 7-5-4301, MCA. There is no specific provision concerning the authority of a municipality to contract to provide fire protection outside its boundaries. However, several statutory sections imply that such contracts may be entered into by a city.

Section 2-17-112, MCA, provides that the State may contract with local fire services and make payments to local governments for fire services provided to state agencies. Rural fire districts are given specific authority to contract with city councils for the extension of fire protection service by the city, and may agree to pay a reasonable consideration therefor. §§ 7-33-2104, 7-33-2107, MCA. Implementation of these statutes would necessarily involve local governments contracting to provide extraterritorial fire protection. The city's authority to contract with entities outside its boundaries is implicit because it is essential in order to execute the power actually conferred in the above-mentioned statutes. See 2A Sutherland, Statutory Construction § 55.03 (1973).

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The Montana Supreme Court has held that a city may enter into contracts to provide services beyond its boundaries. City of Billings v. Public Service Commission of Montana, 38 St. Rptr. 1162, 1173, 631 P.2d 1295, 1307 (1981); Crawford v. City of Billings, 130 Mont. 158, 163, 297 P.2d 292, 295 (1956). Courts in other jurisdictions have specifically addressed furnishing firefighting services outside municipal boundaries. In Pueblo v. Flanders, 225 P.2d 832 (Colo. 1950), and Miller v. City of St. Joseph (Mo. Ct. App. 1972), the authority of a city to provide fire protection outside city limits was upheld as within the interest of the public's health, safety, and welfare.

Thus, I conclude that a city may enter into contracts to provide fire protection outside the boundaries of the city.

THEREFORE, IT IS MY OPINION:

1. A rural fire district that is operated by a board of trustees is a "taxing unit" under Title 15, chapter 10, part 4, MCA.
2. The creation of a new taxing unit is not a "transfer of property into a taxing unit" under section 15-10-412, MCA.
3. The taxes levied on property in one taxing unit have no effect under Title 15, chapter 10, part 4, MCA, on the amount that may be levied by another taxing unit in which the same property is located.
4. A taxing unit created after 1986 is not subject to the tax limitations in Title 15, chapter 10, part 4, MCA.
5. A city may contract with entities to provide fire protection services outside the city limits.

Very truly yours,

MIKE GREELY
Attorney General