

VOLUME NO. 43

OPINION NO. 37

COUNTIES - Taxation authority under district court order that judicial budget be funded;

COUNTY COMMISSIONERS - Taxation authority under district court order that judicial budget be funded;

COURTS - Authority to compel county commissioners to fund judicial budget through tax levy;

COURTS, DISTRICT - Authority to compel county commissioners to fund judicial budget through tax levy;

JUDGMENTS - Defined;

TAXATION AND REVENUE - Authority of district courts to compel county commissioners to fund judicial budget through special tax levy;

MONTANA CODE ANNOTATED - Sections 2-9-316, 3-1-111, 3-5-901, 7-6-2344, 7-6-2352, 7-6-2511, 7-6-2531 to 7-6-2536;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 71 (1982), 39 Op. Att'y Gen. No. 25 (1981), 38 Op. Att'y Gen. No. 31 (1979).

HELD: Section 2-9-316, MCA, does not grant counties the authority to levy taxes in response to a district court order that a judicial budget or budget deficit be funded.

September 21, 1989

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You have recently requested my opinion on the following question:

May a board of county commissioners levy pursuant to section 2-9-316, MCA, up to ten mills annually to pay for the deficit incurred by a judicial district during the past year?

Your question derives from the practice in recent years by several Montana counties of having the district court enter a judgment ordering the county commissioners to levy a special tax to provide for the court's past deficit or future budget. Cascade County has contemplated such a practice but questions whether it is authorized by Montana law.

The district courts of Montana may be funded through a variety of revenue sources. First and foremost the counties are empowered to levy a property tax to provide for court costs. This taxing authority is limited by statute to a maximum value for the different classes of counties. A first- or second-class

county may levy a property tax not to exceed six mills of the appraised property value. § 7-6-2511, MCA. The number of mills authorized to generate revenue for the budget of the district courts has not increased since the inception of the authority over ten years ago. See 1979 Mont. Laws, ch. 692.

Counties may also apply to the Montana Department of Commerce for grants to fund the expenditures of the district courts. § 7-6-2352, MCA. These grants are distributed to the extent excess money is appropriated by the Legislature to fund those enumerated costs of criminal cases listed in section 3-5-901, MCA. The statutory language underlying the grant program has been the subject of several prior Opinions of the Attorney General. See 39 Op. Att'y Gen. No. 71 at 268 (1982), 39 Op. Att'y Gen. No. 25 at 95 (1981). The counties may also fund the district courts by appropriations from other revenue sources, such as their general fund. 38 Op. Att'y Gen. No. 31 at 107 (1979). Finally, statutory provisions exist for emergency expenditure requests and emergency levies. §§ 7-6-2344, 7-6-2531 to 2536, MCA.

You question whether a further method of revenue generation to fund district courts is available to the counties. In 1977, the Legislature enacted Senate Bill 53 (1977 Mont. Laws, ch. 360) which was codified in full as follows:

2-9-316. Judgments against governmental entities except state.

A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

- (1) insurance;
- (2) the general fund or any other funds legally available to the governing body;
- (3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;
- (4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

Several Montana counties of the first or second class have used the special tax levy authority of subsection (3) of this statute to generate revenue for their

courts beyond the six mills authorized by section 7-6-2511, MCA. The district courts of these counties have executed orders directed at their respective county commissioners to impose a special tax levy pursuant to section 2-9-316(3), MCA. The order is labeled a "judgment" which suggests that the decree has sufficient formality to trigger section 2-9-316, MCA. These orders expressly note the authority established by the Montana Supreme Court that a district court may compel the payment of claims for necessary and reasonable district court expenses. See State ex rel. District Court of Eighth Judicial District v. Whitaker, 41 St. Rptr. 1104, 681 P.2d 1097 (1984).

It is beyond dispute that a district court of Montana may issue orders for "out-of-budget reasonable and necessary court expenditures." *Id.* at 1099. With one exception, the authority of the district courts to compel payment of expenditures has been consistently affirmed by the Montana Supreme Court. *Id.*; Board of Commissioners v. Eleventh Judicial District Court, 182 Mont. 463, 597 P.2d 728 (1979); State ex rel. Browman v. Wood, 168 Mont. 341, 543 P.2d 184 (1975); State ex rel. Schneider v. Cunningham, 39 Mont. 165, 101 P. 962 (1909). In State ex rel. Hillis v. Sullivan, 48 Mont. 320, 137 P. 392 (1913), the Supreme Court found that a district court had no authority to appoint and compensate an attendant whose services were not integral to its functions. However, while the district court order compelling payment in Hillis was reversed, the opinion recognized that a district court is clothed "with all the power and authority necessary to render its jurisdiction effective." *Id.* at 394. The language of that opinion mirrors a current code section of nineteenth century origin:

3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or any statute, conferred on a court or judicial officer, all the means necessary for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Thus, various authority exists to support the general recognition that the district courts have the power to compel the payment of their out-of-budget reasonable and necessary expenditures.

The payment of specified judicial expenditures by a county government is distinguishable from the practice you have asked me to examine. You are concerned here with the funding of a judicial budget and retirement of its deficit through the levy of a special property tax ordered by a district court. I conclude that there is no statutory basis for this method of judicially-compelled revenue generation.

The statutory authority relied upon by certain judicial districts and counties is section 2-9-316(3), MCA. This statute by its title and plain language is intended to provide sources of payment for "judgments" against political subdivisions of the state. A "judgment" by definition is "the final determination of the rights of the parties in an action or proceeding." Rule 54(a), Mont. R. Civ. P. An instrument or order does not become a "judgment" merely by its form or its title. Instead, one must examine its content and substance. State ex rel. Meyer v. District Court of Fourth Judicial District, 102 Mont. 222, 57 P.2d 778 (1936). The orders that have been used by the counties to invoke section 2-9-316(3), MCA, generally are comprised of: (1) a recitation of the inability of the county to adequately fund the district court system; (2) the district court's authority to compel payment of necessary and reasonable expenditures; and (3) an order to fully fund the upcoming fiscal year's court budget or previous year's deficit through a special mill levy if other sources of revenue are unavailable. While the instrument is internally labeled a "judgment," the document is not so much "a determination of the rights of parties" as it is a unilateral directive from one party to another to generate revenue through a levy of taxes.

More importantly, it is a settled rule of statutory construction that tax laws are to be strictly construed against the state and in favor of the taxpayer. 3 Sutherland Statutory Construction § 66.01 (4th ed. 1986). Section 2-9-316, MCA, was enacted in 1977 following an interim study that addressed the abolition of sovereign immunity by the 1972 Montana Constitution. The statute provided specific sources from which judgments against political subdivisions of the state could be paid. Minutes, House Judiciary Committee, March 8, 1977. As such, the language and intent of the Legislature related to lawsuits filed against counties. The special tax levy provision must be narrowly construed with its original purpose in mind. I conclude that section 2-9-316, MCA, does not grant counties the authority to levy taxes in response to a court order that a judicial budget or budget deficit be funded.

My opinion should not be construed as limiting either the inherent or statutory power of the judiciary to compel payment of its reasonable and necessary expenditures. In particular, the scope of our courts' inherent power to effect their jurisdiction is not at issue. My holding is limited to the narrow question presented, that is, the proper application of the taxation authority contained within section 2-9-316, MCA.

THEREFORE, IT IS MY OPINION:

Section 2-9-316, MCA, does not grant counties the authority to levy taxes in response to a district court order that a judicial budget or budget deficit be funded.

Sincerely,

MARC RACICOT
Attorney General