

VOLUME NO. 43

OPINION NO. 63

COUNTY GOVERNMENT - Requirement to levy port authority tax;
LOCAL GOVERNMENT - Requirement to levy port authority tax;
MUNICIPAL GOVERNMENT - Requirement to levy port authority tax;
TAXATION AND REVENUE - Requirement of local governing bodies to levy tax certified by port authorities;
MONTANA CODE ANNOTATED - Title 7, chapter 14, part 11; section 67-10-402;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986), 39 Op. Att'y Gen. No. 5 (1981).

HELD: Sections 7-14-1131 and 7-14-1132, MCA, mandate the governing body to levy the amount of tax certified annually to the governing body by the port authority.

June 29, 1990

James L. Tillotson
Billings City Attorney
P.O. Box 1178
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Dear Mr. Tillotson:

You have requested my opinion on the following question:

Does a local governing body have authority to refuse to levy and collect a tax, not exceeding two mills, which has been duly certified by a legally constituted port authority created by that governing body?

Counties and municipalities are conferred the authority to create a local port authority, which becomes a separate public entity, corporate and politic, with its own governing body of commissioners. § 7-14-1101(1), MCA. The governing body of the city or county may, by resolution, determine to exercise any of the powers set forth by Title 7, chapter 14, part 11, MCA, or may confer some or all of those powers upon a port authority. *Id.* The port authority may be granted the power, through its commissioners, to "certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for port purposes." § 7-14-1111(1), MCA. Tax levies are addressed in sections 7-14-1131 and 7-14-1132, MCA, in pertinent part as follows:

Municipal tax levy. The port authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The levy made may not exceed the maximum levy permitted by 67-10-402 The municipality shall collect the taxes certified by a port authority in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of such taxes when and as paid to the port authority must be deposited in a special account[.] [Emphasis added.]

County tax levy. In counties supporting ports of port authorities, a levy authorized in 67-10-402 may be made for such purposes. [Emphasis added.]

Section 67-10-402, MCA, establishes a maximum levy of two mills for ports, which is in addition to the annual levy for general administrative purposes or to the all-purpose levy. Your question is whether the governing bodies are permitted to levy the tax or are mandated to levy the tax. Due to the term "may," which can be interpreted as either mandatory or permissive, see State ex rel. Griffin v. Greene, 104 Mont. 460, 469, 67 P.2d 995 (1937), an ambiguity exists in the statutes. My opinion assumes that the governing body has not reserved the power to certify the amount of tax to be levied.

Similar ambiguities have been addressed in prior Attorney General Opinions with respect to county libraries and conservation districts. In 41 Op. Att'y Gen. No. 91 (1986), it was held that the board of county commissioners did not have the discretion to levy no millage for the funding of the county library. It was stated:

Finally, use of the permissive "may" in section 22-1-304(1), MCA, does not, in view of the trustees' independent budgetary authority, grant the county commissioners discretion not to levy any millage, since the existence of such discretion would effectively supersede the trustees' express powers. Section 22-1-304(1) MCA, must instead be read together with the trustees' broad control over library operations and, if so construed, does not permit an interpretation which leaves within the county commissioners' determination whether some or none of the millage necessary to meet library budget demands should be assessed. See 39 Op. Att'y Gen. No. 5 (1981).

In 39 Op. Att'y Gen. No. 5 (1981), although the statute used the term "may," construction in harmony with the other provisions of the act resulted in the determination that the county commissioners' duty to levy a proper assessment for the conservation district was mandatory.

Likewise, I find that the other provisions in Title 7, chapter 14, provide evidence of the Legislature's intent that, if the governing body has granted a local port authority the power to certify the amount of tax to be levied, then the governing body's duty to levy the millage certified by the commissioners of the port authority is mandatory. The port authority may be granted the power to issue bonds and pledge port authority revenues, including revenues raised from a tax levy, as security for the repayment of those bonds. § 7-14-1133, MCA. Such grant of power would be meaningless if the governing body which created the port authority had the residual power to deny or reduce a tax levy certified by the port authority. In addition, section 7-14-1131, MCA, specifically provides that a port authority may, prior to issuance

of bonds, resolve that the total amount of taxes authorized by law will be certified, levied and deposited annually until the bonded debt is retired. It must be assumed that the Legislature would not adopt meaningless language. Crist v. Segna, 191 Mont. 210, 622 P.2d 1028 (1981). Therefore, if the resolution creating the port authority confers plenary budgetary powers, the duty of the governing body to levy the millage certified by the port authority commissioners must be mandatory.

Further support for this conclusion is found in the minutes of the House Local Government Committee of March 7, 1985, which recommended passage of the bill. Although somewhat confusing, the following excerpt shows that the intent was to authorize a separate levy for the port authority:

Rep. Brown asked Mr. Monaghan whether on page 16 they are not adding more levies and sharing the 2 mill levy as used by airports. Mr. Monaghan said he believes it is a separate levy. Rep. Brown said he thought that is how it was meant to be and Mr. Monaghan replied it should be a separate levy. Rep. Wallin said that is the same question he asked and Mr. Monaghan told him it was the same levy that had been split another way.

Apparently there was some confusion because section 67-10-402, MCA, also provides for a two-mill levy for airports; however, the language of that section as codified makes it clear there are authorizations for two separate two-mill levies. It is clear from the statutory scheme that the governing bodies are authorized to levy any amount of millage not to exceed two mills for port authority purposes. However, the amount of levy within that maximum is to be determined by the commissioners of the port authority and certified to the governing body. The governing body then must collect the tax and pay it to the port authority.

THEREFORE, IT IS MY OPINION:

Sections 7-14-1131 and 7-14-1132, MCA, mandate the governing body to levy the amount of tax certified annually to the governing body by the port authority.

Sincerely,

MARC RACICOT
Attorney General