

VOLUME NO. 43

OPINION NO. 74

COUNTIES - County road fund and Initiative 105;
TAXATION AND REVENUE - County road fund and Initiative 105;
LOCAL GOVERNMENT - "County rural property" not a "taxing unit";
MONTANA CODE ANNOTATED - Sections 7-14-2501, 7-14-2502, 15-1-101(2), 15-10-402, 15-10-412(7)(a);
MONTANA LAWS OF 1989 - Chapter 560, section 1;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No 68 (1990), 42 Op. Att'y Gen. No. 118 (1988), 42 Op. Att'y Gen. No. 80 (1988).

- HELD: 1. The increases in the number of mills allowed for county road and bridge construction and maintenance in sections 7-14-2501 and 7-14-2502, MCA, are not exceptions to the property tax freeze in I-105, as codified in section 15-10-402, MCA.
2. "County rural property" is not a "taxing unit" as defined in section 15-1-101(2), MCA.

November 5, 1990

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

Dear Mr. Paul:

You have requested an opinion on the following questions:

May the county, under sections 7-14-2501 and 7-14-2502, MCA, increase the mill levy for construction, maintenance, or improvement of public highways or bridges above the 1986 level imposed by Initiative 105 (§ 15-10-402, MCA)? If not, may the county rural property nevertheless be considered a taxing district?

Section 7-14-2501, MCA, provides in pertinent part:

General road tax authorized. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than 20 mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than 23 mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

Section 7-14-2502, MCA, provides in pertinent part:

Special bridge tax authorized -- combined ferry and bridge fund.

(1) Each board may levy a special tax not to exceed 8 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

In 1989, the Montana Legislature amended this section, substituting "20 mills" for "15 mills" and "23 mills" for "18 mills." In section 7-14-2502, MCA, the number of mills allowable for county bridge construction, repair, and maintenance was also increased from 4 mills to 8 mills. You suggest that these sections are not limited by the codification of Initiative 105 (I-105), § 15-10-402, MCA, which imposes a freeze on property taxes at 1986 levels. You reason that sections 7-14-2501 and 7-14-2502, MCA, are specific statutes allowing increases in mills while section 15-10-402, MCA, is only a general restriction. You would apply the rule of statutory construction that the specific statute controls the general one. § 1-2-102, MCA.

By increasing the number of mills available for county road and bridge construction, the Legislature did not necessarily authorize an increase in property taxes. The result of the legislation could also be that the Legislature envisioned that the county road or bridge funds would merely receive a larger piece of the property tax pie. Within the taxing unit, one levy may be increased while a similar levy is decreased in order to remain within the I-

105 restrictions. Such budgeting measures were expressly recognized in 42 Op. Att'y Gen. No. 118 at 449 (1988). A review of the legislative history of sections 7-14-2501 and 7-14-2502, MCA, supports this interpretation of the millage increases.

The millage increase in section 7-14-2501, MCA, was adopted as Senate Bill 77 (SB 77), Montana Laws of 1989, chapter 560, section 1. In considering SB 77, the Senate Local Government Committee directly addressed the question of whether an increase in the number of mills would affect the I-105 limitation. Gordon Morris, the executive director of the Montana Association of Counties and a proponent of the bill, stated that the bill would "enable county commissioners to shift budget amounts to areas of road need." Minutes of Senate Local Government Committee, January 12, 1989, at 2. The committee minutes further reflect:

Senator Crippen asked Gordon Morris to explain how this bill relates to I 105 and SB 71 [the legislative clarification of I-105]. Mr. Morris responded that the only way a levy can be increased within the current statutory limitation would be offsetting that increase with a decrease somewhere else.

Id. Mr. Morris made a similar statement before the House Local Government Committee: "I-105 is in place so taxes are frozen and this [SB 77] does not represent an automatic tax increase but 'like levies' would have to be cut to remain within the guidelines of I-105." Minutes of House Committee on Local Government, March 2, 1989, at 6. The fiscal note on SB 77 under the heading of "TECHNICAL OR MECHANICAL DEFECTS OF [sic] CONFLICTS WITH EXISTING LEGISLATION" cautioned:

Section[] 15-10-402, MCA, and temporary Section 15-10-412, MCA, (Terminates December 31, 1989) freeze county mill levies at their 1986 levels unless county taxable valuation decreases by 5% or more from the previous tax year. Counties experiencing static or only slightly decreasing taxable valuations would therefore have to reduce other county levies in order to take advantage of the provision of SB77. [Emphasis added.]

Fiscal note, SB 77 at 3.

The mill increase in section 7-14-2502, MCA, for the county bridge fund was similarly not intended as an exception to I-105. In addressing the House Committee on Highways and Transportation, Gordon Morris stated that "this [the millage increase] is not to be assumed as a personal property tax increase, but it does increase the statutory authority." Minutes of Hearing on House Bill 212, House Committee on Highways and Transportation, January 24, 1989, at 2. In the Senate Taxation Committee, Mr. Morris again pointed out that "under the provisions of I 105 language in the statutes, this would

not be an automatic mill levy increase, rather it would be implemented by a reduction of millage in other areas of the county budget." Minutes of Hearing on House Bill 212, Senate Taxation Committee, March 1, 1989, at 3.

From the legislative history, it is apparent that the Legislature did not intend to circumvent or supersede the property tax freeze by increasing the number of mills available for the county road and bridge funds. Rather, the Legislature recognized that the increased millage would have to be offset by a decrease of mills in another levy in order to operate within the constraints of I-105.

You next ask whether rural county property can be considered a separate "taxing district" for purposes of calculating whether there has been a 5 percent decrease in property valuation under section 15-10-412(7)(a), MCA. Under this subsection, a tax higher than the 1986 tax may be imposed if the "taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year." You indicate that the taxable valuation of rural county property has decreased by more than the requisite 5 percent, but there has not been more than a 5 percent decrease in taxable valuation county-wide.

There is no question that the county is a "taxing unit." Section 15-1-101(2), MCA, defines the phrase "taxing unit" as including

a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

You suggest, however, that the "county rural property" can be considered a "taxing unit." In order to be a taxing unit, the county rural property must be an "organized body authorized by law to establish tax levies." "County rural property" is not such an "organized body." The county, not "county rural property," is authorized to levy the taxes upon rural property under section 7-14-2501, MCA.

Refuse disposal districts and rural fire districts operated by the county have not been considered "taxing units" because they do not have an independent governing body separate from the county commissioners. In 42 Op. Att'y Gen. No. 80 at 315 (1988), the following reasoning was used:

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.

See also 43 Op. Att'y Gen. No. 68 (1990) at 3 in which a refuse disposal district was not considered a "special taxing district" because it has no governing body independent of the county commissioners.

While certain levies may only apply to county rural property, such as the county road tax in section 7-14-2501, MCA, this characteristic alone does not mean that the county rural property is a "taxing unit." "County rural property" is not a separate entity. It does not have a governing body separate from or independent of the board of county commissioners. As such, it cannot be considered a "taxing unit."

THEREFORE, IT IS MY OPINION:

1. The increases in the number of mills allowed for county road and bridge construction and maintenance in sections 7-14-2501 and 7-14-2502, MCA, are not exceptions to the property tax freeze in 1-105, as codified in section 15-10-402, MCA.
2. "County rural property" is not a "taxing unit" as defined in section 15-1-101(2), MCA.

Sincerely,

MARC RACICOT
Attorney General