

VOLUME NO. 44

OPINION NO. 10

APPROPRIATIONS - Private organizations not under government control;
COUNTIES - Search and rescue units; contracts with private organizations;
COUNTY GOVERNMENT - Search and rescue units; contracts with private organizations;
LOCAL GOVERNMENT - Search and rescue units; contracts with private organizations;
PUBLIC FUNDS - Search and rescue units;
SHERIFFS - Control over search and rescue units;
MONTANA CODE ANNOTATED - Sections 7-7-2103, 7-32-235, 7-32-2121(11);
MONTANA CONSTITUTION - Article V, section 11(5);
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 7 (1979), 37 Op. Att'y Gen. No. 105 (1978), 37 Op. Att'y Gen. No. 25 (1977).

- HELD: 1. A county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit may maintain private bank accounts to distribute funds accumulated from nontax sources.
2. The county sheriff does not control the finances of a county-recognized and -supported search and rescue unit.

June 3, 1991

John T. Flynn
Broadwater County Attorney
P.O. Box 96
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Dear Mr. Flynn:

You have requested my opinion on two questions I have rephrased as follows:

1. May a county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit maintain private bank accounts to distribute funds accumulated from nontax sources?
2. Does the county sheriff control the finances of such a search and rescue unit, i.e., must the sheriff authorize any disbursement of funds by the unit?

You have provided me with the following facts: A nonprofit search and rescue unit has operated in Broadwater County for many years. The unit was originally funded solely through donations and private contributions. Recently, however, Broadwater County voters approved, pursuant to section 7-32-235(3), MCA, the levy of an annual tax to support the unit. All monies accumulated through donations have historically been placed in a separate bank account payable upon the signature of one of the officers of the unit. All tax monies received by the unit have been budgeted annually and paid upon a county claim form approved by the Broadwater County Commissioners. Recently questions have arisen regarding the appropriateness of the county-recognized and -supported unit's maintaining a separate private bank account, and as to whether the unit's annual budget and disbursements of funds must be approved by the county sheriff.

In 1981 the Legislature enacted a bill (1981 Mont. Laws, ch. 42), codified at sections 7-32-235(2) and 7-32-2121(11), MCA, placing search and rescue units and their officers under the operational control and supervision of the county sheriff. The legislative history and the plain language of the bill make it clear that the Legislature intended only to give the sheriff supervisory authority over the units when they are called into service. See Minutes, Senate Judiciary Committee, Jan. 6, 1981, at 1-2; Minutes, House Judiciary Committee, Mar. 3, 1981, at 1-2, 6-7. Four years later, the Legislature amended section 7-32-235, MCA, to authorize counties to establish or recognize one or more search and rescue units within the county and, after approval by the voters, to levy an annual tax to support the established or recognized units. § 7-32-235(1), (3), MCA. The legislative history of the amendment reveals a legislative intent to authorize optional funding for these volunteer units which act for the public good; it reveals no intent to give the county sheriff control over the finances

of the units. See Minutes, House Local Government Committee, Feb. 12, 1985, at 1-2; Minutes, Senate Taxation Committee, Mar. 19, 1985, at 1.

Based upon the legislative histories of these bills, it is my opinion that the Legislature intended that county-recognized search and rescue units remain private, volunteer organizations. While these county-recognized units function under the sheriff's operational control whenever called into service, all other aspects of the units remain under the control of the officers of the units. This raises the issue of whether provision of public funds to such an organization is proper. A local government unit may not make an appropriation to a private organization not under government control. Mont. Const. Art. V, § 11(5); § 7-7-2103, MCA; 37 Op. Att'y Gen. No. 25 (1977). Nonetheless, the local government may contract with private organizations to perform functions or services which the local government is authorized to provide for its constituencies. 38 Op. Att'y Gen. No. 7 at 27 (1979); 37 Op. Att'y Gen. No. 105 at 441 (1978). The inquiry is, first, whether the local government has the power to provide the service or function and, second, whether a contract with a private organization is a reasonable and appropriate means of providing that service or function. 38 Op. Att'y Gen. No. 7 at 27 (1979). The Legislature has answered both of these inquiries affirmatively by its enactment of section 7-32-235, MCA. I therefore conclude that, pursuant to section 7-32-235, subsections (1) and (3), MCA, the county may contract with a county-recognized search and rescue unit and provide public funds to the unit in exchange for search and rescue functions provided to the county. I further conclude that such a search and rescue unit, as a private organization, may maintain private bank accounts to distribute funds accumulated from nontax sources and that there is no requirement that the county sheriff authorize or approve disbursements of funds by the unit.

THEREFORE, IT IS MY OPINION:

1. A county-recognized search and rescue unit that, pursuant to section 7-32-235(3), MCA, receives tax money to support the unit may maintain private bank accounts to distribute funds accumulated from nontax sources.
2. The county sheriff does not control the finances of a county-recognized and -supported search and rescue unit.

Sincerely,

MARC RACICOT
Attorney General