

VOLUME NO. 44

OPINION NO. 14

CORRECTIONAL FACILITIES - Voter approval requirements for imposition of levy for operational costs of juvenile detention facilities;

COUNTY GOVERNMENT - Voter approval requirements for imposition of levy for operational costs of juvenile detention facilities;

ELECTIONS - Voter approval requirements for imposition of levy for operational costs of juvenile detention facilities;

JUVENILES - Voter approval requirements for imposition of levy for operational costs of juvenile detention facilities;

TAXATION AND REVENUE - Voter approval requirements for imposition of levy for operational costs of juvenile detention facilities;

MONTANA CODE ANNOTATED - Sections 7-6-2501, 7-6-2523, 7-6-2526, 7-6-2531, 7-6-2531(2), 15-10-402(1), 15-10-412, 15-10-412(9);

MONTANA LAWS OF 1991 - Chapter 745, section 2;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 34 (1981).

HELD: House Bill 74 does not require that the levy for juvenile detention facilities be approved by the voters subsequent to the initial voter approval unless there is a proposal to increase the amount of the previously approved levy.

July 15, 1991

Dr. Gordon Browder, Chairman
Board of Crime Control
Scott Hart Building
303 North Roberts
Helena MT 59620

Dear Dr. Browder:

You have requested my opinion on the following question:

Does House Bill 74, which allows counties upon the approval of the voters to impose a levy for the operational costs of juvenile detention facilities, require annual or biennial voter approval?

House Bill (hereinafter HB) 74, passed by the Montana Legislature during the 1991 session, authorizes a county to impose a levy for the purpose of providing juvenile detention programs. The bill also requires approval by a majority of the qualified electors voting on the question prior to the imposition of the levy. 1991 Mont. Laws, ch. 745, § 2. The bill is silent as to whether an election is required subsequent to initial voter approval of the levy.

I conclude that HB 74 does not require that the levy for juvenile detention facilities be approved by the voters subsequent to initial voter approval unless there is a proposal to increase the amount of the previously approved levy.

Two statutes address procedures for voter approval when a county seeks to either exceed the levy or levies allowed by law, § 7-6-2531, MCA, or to exceed the limit set on the amount of taxes levied by a taxing unit against any particular property, § 15-10-412(9), MCA.

Section 15-10-412(9), MCA, provides a procedure whereby a county may exceed the limitations set by section 15-10-402(1), MCA, and clarified in section 15-10-412, MCA, on the amount of taxes that may be levied against various classes of property. The levy for juvenile detention programs, however, is specifically exempted from the limits imposed in sections 15-10-402(1) and 15-10-412, MCA. 1991 Mont. Laws, ch. 745, §§ 3, 4. Therefore, the election procedures of section 15-10-412(9), MCA, do not apply to HB 74.

Section 7-6-2531, MCA, provides a procedure whereby a county may exceed the maximum mill levies "allowed by law." A county may impose a levy for the

purpose of defraying the general expenses of the county up to the maximum levy set by section 7-6-2501, MCA, or the county may impose an all-purpose levy as defined in section 7-6-2523, MCA. If a county elects to impose a levy greater than the maximum mills allowed by statute it must follow the procedures provided in section 7-6-2531, MCA. 39 Op. Att'y Gen. No. 34 at 135 (1981). However, these statutes do not limit a county's authority to levy other taxes authorized by statute for special purposes and, as a result, do not limit the county's ability to impose a levy for juvenile detention programs if such a levy is approved by the voters under HB 74. § 7-6-2526, MCA.

HB 74 does not set a maximum mill levy. Rather it requires that a majority of the qualified voters approve the mill levy which the governing body determines is necessary. The voters of the county, therefore, are authorized by the Legislature to set the maximum mill levy for the provision of a juvenile detention program. Once this maximum mill levy is set by the voters, the county need not bring the issue before the electorate again unless the governing body of the county proposes to raise the mill levy beyond that set by the voters, i.e., beyond that "allowed by law."

In order to raise the number of mills beyond the maximum initially set by the voters, the governing body must comply with the procedures set forth in section 7-6-2531, MCA, and bring the requested increase in the amount of mills before the voters. Section 7-6-2531(2), MCA, allows the county to impose the increased mill levy, if authorized by a majority of the qualified voters, "for a period not to exceed 2 years." § 7-6-2531(2), MCA. Therefore, should the governing body decide at any time that an increase in the amount of mills is necessary, it must follow the procedures outlined in section 7-6-2531, MCA.

In conclusion, House Bill 74 requires that the qualified electors of a county approve a maximum mill amount to be levied for the purpose of providing a juvenile detention program. This issue need only be brought before the voters one time, unless additional increases in the approved levy are sought thereafter.

THEREFORE, IT IS MY OPINION:

House Bill 74 does not require that the levy for juvenile detention facilities be approved by the voters subsequent to the initial voter approval unless there is a proposal to increase the amount of the previously approved levy.

Sincerely,

MARC RACICOT
Attorney General