

**VOLUME NO. 44**

**OPINION NO. 16**

**CITIES AND TOWNS** - Creation of new rural fire district from consolidation of two existing rural fire districts;

**CONSOLIDATION** - Creation of new rural fire district from consolidation of two existing rural fire districts;

**COUNTIES** - Creation of new rural fire district from consolidation of two existing rural fire districts;

**FIRE DISTRICTS** - Creation of new rural fire district from consolidation of two existing rural fire districts;

**TAXATION AND REVENUE** - Whether consolidated rural fire district formed after tax year 1986 is subject to mill levy limitations;

**MONTANA CODE ANNOTATED** - Sections 7-33-2101, 7-33-2104, 7-33-2120, 15-10-401 to 15-10-412;

**OPINIONS OF THE ATTORNEY GENERAL** - 42 Op. Att'y Gen. No. 109 (1988), 42 Op. Att'y Gen. No. 80 (1988).

- HELD: 1. Two rural fire districts that consolidate pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations.
2. The property tax limitations in sections 15-10-401 to 412, MCA, are not applicable to a trustee-managed rural fire district established after tax year 1986.

July 30, 1991

Robert L. "Dusty" Deschamps III  
Missoula County Attorney  
Missoula County Courthouse  
Missoula MT 59802

Dear Mr. Deschamps:

You have requested my opinion concerning the following questions:

1. Does the consolidation of two rural fire districts pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations under sections 15-10-401 to 412, MCA?
2. If not, what is the appropriate mill levy limit for the consolidated rural fire districts?

I conclude that the consolidation of two rural fire districts pursuant to section 7-33-2120, MCA, results in the creation of a new rural fire district for purposes of calculating mill levy limitations.

A rural fire district is established by the board of county commissioners of the county in which the fire district is located. § 7-33-2101, MCA. The county commissioners may either operate the fire district itself or appoint five trustees "to govern and manage the affairs of the fire district." § 7-33-2104, MCA. In this instance, both the Frenchtown rural fire district and the Petty Creek rural fire district are governed by boards of trustees. The two distinct rural fire districts are contemplating consolidating to improve their services to the Frenchtown and Petty Creek communities. You have asked whether the Petty Creek and Frenchtown fire districts upon consolidation form a new fire district for purposes of calculating mill levy limits under sections 15-10-401 to 412, MCA.

The consolidation of existing rural fire districts is controlled by section 7-33-2120, MCA, which states:

**Consolidation of fire districts.** (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of trustees must also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the *creation of the consolidated rural fire district* under subsection (3);

(b) *the name of the new rural fire district;*

(c) *a boundary map of the new rural fire district;* and

(d) the estimated financial impact of consolidation on the average taxpayer within *the proposed district.*

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Property owners of each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice more than 50% of the property owners in an existing district protest the consolidation, it is void.

(4) *After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.* [Emphasis added.]

Section 7-33-2120, MCA, by its clear language contemplates the creation of a new rural fire district as the result of the consolidation of two existing rural fire districts. The consolidated fire district will have new trustees appointed under section 7-33-2104, MCA, and will then operate as a *single rural fire district* under the control of those trustees. § 7-33-2120(4), MCA. The consolidation of the Frenchtown and Petty Creek fire district will also result in a new name and new boundary map for the consolidated district. § 7-33-2120(1)(b) and (c), MCA. Accordingly, I conclude, after reviewing section 7-33-2120, MCA, that the consolidation of two existing rural fire districts creates a new rural fire district.

This new rural fire district is not subject to the mill levy limitations under Initiative No. 105 (I-105) and sections 15-10-401 to 412, MCA. Former Attorney General Mike Greely held that rural fire districts created after tax year 1986 and managed by a board of trustees are not subject to the property tax limitations in sections 15-10-401 to 412, MCA; 42 Op. Att'y Gen. No. 80 at 312 (1988); 42 Op. Att'y Gen. No. 109 at 416 (1988). A new rural fire district, created by consolidating Petty Creek rural fire district and Frenchtown rural fire district, will be managed by a board of trustees, and thus the new district would not be subject to the property tax limitations. The new consolidated fire district would be subject to property tax limitations only if the new fire district were governed by the board of county commissioners under section 7-33-2104, MCA. 42 Op. Att'y Gen. No. 109, *supra*. In 42 Op. Att'y Gen. No. 109, Attorney General Greely stated that "if a new fire district is operated by the county and not a board of trustees, the county would constitute the taxing unit and would be subject to the property tax limitations in sections 15-10-401 to 412, MCA, since it imposed taxes in 1986."

THEREFORE, IT IS MY OPINION:

1. Two rural fire districts that consolidate pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations.
2. The property tax limitations in sections 15-10-401 to 412, MCA, are not applicable to a trustee-managed rural fire district established after tax year 1986.

Sincerely,

MARC RACICOT  
Attorney General