

VOLUME NO. 44

OPINION NO. 19

SOLID WASTE - Issuance of revenue bonds payable from service charges assessed by joint solid waste management district;
MONTANA CODE ANNOTATED - Section 7-13-233;
MONTANA LAWS OF 1991 - Chapter 770, sections 12, 18, 22, 23.

HELD: A joint solid waste management district may not issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes.

August 23, 1991

Selden S. Frisbee
Cut Bank City Attorney
P.O. Box 1998
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Dear Mr. Frisbee:

You have requested my opinion on a question which I have rephrased as follows:

May a joint solid waste management district issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes?

Senate Bill (hereinafter SB) 189, passed by the Montana Legislature during the 1991 session, revises the laws relating to refuse disposal districts. SB 189 changes the term "refuse disposal" district to "solid waste management" district and authorizes the creation of a solid waste management district by resolution of the county commissioners pursuant to the procedures outlined in Title 7, chapter 13, part 2 of the Montana Code Annotated. 1991 Mont. Laws, ch. 770. It additionally allows for the creation of joint districts made up of two or more counties for the purpose of providing solid waste management for those counties involved in the joint district. 1991 Mont. Laws, ch. 770, § 18.

Your question refers specifically to the issuance of revenue bonds payable from service charges assessed by a joint solid waste management district. Section 12 of SB 189 amends section 7-13-233, MCA, and authorizes a solid waste management district to assess a service charge and to collect the amount of the service charge by either (1) causing the service charge to be placed on the property tax notices and collected with the property taxes or (2) establishing a separate system for collecting the service charges, allowing collection of the fees more frequently than is provided for in the collection of property taxes. 1991 Mont. Laws, ch. 770, §§ 12, 22.

Section 23 of SB 189 authorizes a joint district to borrow money and to issue revenue bonds under the following conditions:

(1) A joint district may borrow money for any purpose provided in [sections 17 through 26] and issue bonds, including refunding bonds, in a form and upon terms as it may determine, payable from any revenue of the joint district, including revenue from:

(a) service charges authorized in [section 22] that are collected *other than through tax notices and a lien upon property*;

(b) grants or contributions from the state or federal government; or

(c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in [sections 17 through 26], bonds issued pursuant to [sections 17 through 26] by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

....

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in [sections 17 through 26] prior to the payment of current costs of operation and

maintenance of the solid waste management system. [Emphasis added.]

1991 Mont. Laws, ch. 770, § 23.

Section 23 provides that a joint district may borrow money and issue revenue bonds for any purpose provided in sections 17 through 26. Section 23(1) provides that the obligations and bonds are payable from any revenue of the joint district and then provides a nonexhaustive list of the particular kinds of revenue from which the bonds are payable. The language used in section 23(1)(a), however, is restrictive in nature. It provides that a district may use revenue from service charges authorized in section 22 that are collected *other than* through tax notices and a lien upon the property. 1991 Mont. Laws, ch. 770, § 23(1)(a).

The fundamental rule of statutory construction is that the intention of the Legislature controls. § 1-2-102, MCA; Missoula County v. American Asphalt, Inc., 216 Mont. 423, 426, 701 P.2d 990, 992 (1985). The phrase "other than through tax notices and a lien upon the property" was intentionally added to section 23(1)(a) by the Montana Legislature. See Free Conference Committee on Senate Bill No. 189, Report No. 1, Apr. 23, 1991. Even though section 23 contains language which initially indicates that the revenue bonds or other obligations are payable from *any* revenue source, the effect of section 23(1)(a) is to specifically exclude as a revenue source those service charges which are collected through tax notices and a lien upon property. When general and particular provisions of a statute are inconsistent, the particular takes precedent over the general. City of Billings v. Smith, 158 Mont. 197, 211, 490 P.2d 221, 229 (1971).

Although section 23(1)(a) prohibits as a source of payment for revenue bonds those service charges that are collected through tax notices, there is no such prohibition on the use of service charges collected through other methods. As already noted, section 12 of SB 189 permits a waste management district to collect service charges by means other than by placing the charge on property tax notices. Such charges, if not paid, become delinquent and a lien on the property subject to the same penalties and rate of interest as property taxes. There is nothing in SB 189 which suggests that service charges, other than those collected through property tax notices, may not be used as a source of payment for revenue bonds issued by the district. With respect to revenue from liens, pursuant to section 23(1)(a) of SB 189 the only revenue derived from a lien that may not be used for payment of revenue bonds is that which results from failure to pay service charges through property tax notices.

In light of the above discussion, it would appear that the intent of the Montana Legislature was to authorize a joint solid waste management district to issue revenue bonds, but to exclude those service charges which are collected through tax notices as a possible revenue source from which revenue bonds are payable.

THEREFORE, IT IS MY OPINION:

A joint solid waste management district may not issue revenue bonds payable from service charges placed on property tax notices to property owners and collected with property taxes.

Sincerely,

MARC RACICOT
Attorney General