

## VOLUME NO. 44

## OPINION NO. 28

COUNTIES - Whether a solid waste management district is a "political subdivision";

COUNTY GOVERNMENT - Whether a solid waste management district is a "political subdivision";

INVESTMENTS, BOARD OF - Whether a solid waste management district is a "political subdivision";

LOCAL GOVERNMENT - Whether a solid waste management district is a "political subdivision";

SOLID WASTE - Imposition of service charges on all properties within solid waste management district to repay revenue bonds and loans;

SOLID WASTE - Whether a solid waste management district is a "political subdivision";

MONTANA LAWS OF 1991 - Chapter 770, section 6;

MONTANA CODE ANNOTATED - Title 7, chapter 13, part 2; sections 1-2-102, 7-13-202, 7-13-204, 7-13-215, 7-13-231 to 7-13-233, 7-13-236, 7-13-237, 7-13-308, 17-5-1602(1)(b), 17-5-1604(3), 75-10-112;

OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 19 (1991), 43 Op. Att'y Gen. No. 68 (1990), 40 Op. Att'y Gen. No. 22 (1983).

- HELD: 1. A solid waste management district is not a political subdivision for purposes of the Municipal Finance Consolidation Act.
2. A solid waste management district may impose service charges on all property within the district to repay loans and revenue bonds issued pursuant to section 7-13-236, MCA, as long as those service charges are not collected through tax notices and a lien upon property.

March 6, 1992

David M. Lewis, Director  
Board of Investments  
Department of Commerce  
555 Fuller Avenue  
Helena MT 59620-0125

Dear Mr. Lewis:

You have requested my opinion on two questions:

1. Is a solid waste management district a "political subdivision" for purposes of the Municipal Finance Consolidation Act?
2. Can a solid waste management district impose service charges on all properties within the district to repay loans and revenue bonds issued under section 7-13-236, MCA?

Your first question concerns whether a solid waste management district is a political subdivision under the Municipal Finance Consolidation Act (MFCFA). As I stated in 43 Op. Att'y Gen. No. 68 at 256 (1990): "The MFCFA is ... designed to give local government units the ability to borrow money at lower interest rates. § 17-5-1602(1)(b), MCA." The MFCFA defines "local government unit" as "any municipal corporation or *political subdivision* of the state, including without limitation any city, town, county, school district, other special taxing district, or the board of regents of the Montana university system." (Emphasis added.) § 17-5-1604(3), MCA.

In 43 Op. Att'y Gen. No. 68, *supra*, I concluded that a refuse disposal district is not a political subdivision as that term is used in section 17-5-1604(3), MCA. Since the opinion was issued, the Montana Legislature passed Senate Bill 189 in 1991, which generally revised the laws relating to refuse disposal districts and the boards that manage these districts. One of the revisions was that the

phrase "refuse disposal district" was changed to "solid waste management district." 1991 Mont. Laws, ch. 770, § 6. In addition to renaming the districts as solid waste management districts, the 1991 Legislature substantively amended Title 7, chapter 13, part 2, MCA, concerning solid waste management. Such amendments make it necessary to review my holding in 43 Op. Att'y Gen. No. 68 and determine whether a solid waste management district is a political subdivision for purposes of the MFCA under section 17-5-1604(3), MCA.

In 43 Op. Att'y Gen. No. 68 at 258, I stated that "to determine whether a refuse [disposal] district is a political subdivision under section 17-5-1604(3), MCA, an analysis of the nature and duties of a refuse [disposal] district is necessary." I examined the powers and duties of the board of the refuse disposal district under section 7-13-215, MCA (1989), which at that time expressly stated:

The board of a refuse disposal district established and organized under this part has the following powers and duties, *with the approval of the county commissioners of the counties involved* [.]  
[Emphasis added.]

I held that in order to be a political subdivision, the refuse disposal district would have to be an independent governing body, capable of exercising authority separate from the county commissioners who created it. 43 Op. Att'y Gen. No. 68 at 259. I concluded that the board of the refuse disposal district was not an independent governing body due to the fact that under section 7-13-215, MCA (1989), the board's powers and duties were subject to the approval of the county commissioners. *Id.* I specifically stated that "[b]ecause the refuse board is not a separate and independent body and has not been delegated supervisory authority over the refuse disposal district, I conclude that a refuse disposal district cannot be considered a 'political subdivision' as that term is used in section 17-5-1604(3), MCA." *Id.*

The 1991 Legislature, in an attempt to give solid waste management districts and their boards greater autonomy from the county commissioners, amended section 7-13-215, MCA, to read as follows:

Except for powers specifically reserved by the counties in the resolution creating the district, the board has the powers and duties provided in 75-10-112.

Section 75-10-112, MCA, contains a very broad and expansive list of powers and duties that the solid waste management district board would assume under section 7-13-215, MCA. At first glance, it appears that if a board assumed all powers enumerated in section 75-10-112, MCA, then the board would be an independent governing body, separate from the county commissioners, and a political subdivision for purposes of the MFCA. However, the Legislature, in amending section 7-13-215, MCA, limited the powers and duties the board could assume under section 75-10-112, MCA, by inserting the language,

"[e]xcept for powers specifically reserved by the counties in the resolution creating the district." Section 7-13-204, MCA, sets forth the powers the county can reserve for itself in the resolution. Section 7-13-204, MCA, specifically provides:

- (1) Before creating a solid waste management district, the commissioners shall pass a resolution of intention to do so.
- (2) The resolution shall designate:
  - (a) the proposed name of such district;
  - (b) the necessity for the proposed district;
  - (c) a general description of the territory or lands of said district, giving the boundaries thereof;
  - (d) the general character of the collection service;
  - (e) the proposed fees to be charged for the service; and
  - (f) *the powers to be delegated to the board and the powers to be exercised only with the approval of the county commissioners.*  
[Emphasis added.]

Under section 7-13-204(2)(f), MCA, the county commissioners retain the authority to decide which powers will be delegated to the board and which are to be "exercised only with the approval of the county commissioners." Although the Legislature amended section 7-13-215, MCA, to grant greater powers to the board, those powers may still be left under the supervisory control of the commissioners. § 7-13-204(2)(f), MCA. With respect to the specific factual situation which gave rise to your opinion request, the resolution of intention to create a solid waste management district left control over the district with the county commissioners.

Even if the resolution of intention did convey full powers and duties to the solid waste management district board, a number of other code sections demonstrate the control the county commissioners have over the actions of the solid waste management district board. Under section 7-13-231, MCA, the board cannot establish a service fee without the approval of the county commissioners. Furthermore, the rates for those service charges are subject to the approval of the board of county commissioners. § 7-13-232, MCA. Similarly, the board must certify to the county commissioners the "service charge needed for the current fiscal year, the due but unpaid service charges, and a description of the property against which the service charges are to be levied." § 7-13-233(2), MCA.

The county commissioners also control the board's ability to raise money through revenue bonds and general obligation bonds. §§ 7-13-236, 7-13-237, MCA. Section 7-13-236(1), MCA, specifically states: "*The commissioners may issue revenue bonds, including refunding bonds, or borrow money for the acquisition of property, construction of improvements, or purchase of equipment or to pay costs related to planning, designing, and financing a solid waste management system.*" [Emphasis added.] Section 7-13-202, MCA, defines the word "commissioners" as the board of county commissioners. Similarly, before the solid waste management district may issue general obligation bonds, it must receive approval by the board of county commissioners. § 7-13-237, MCA.

Clearly, the solid waste management district is not governed by an independent board autonomous from the supervisory control of county commissioners. Accordingly, I conclude that solid waste management districts are not political subdivisions for purposes of the MFCA.

Your second question is whether a solid waste management district may impose a service fee on all properties within the district in order to repay revenue bonds and loans under section 7-13-236, MCA, even though some of the property owners do not avail themselves of the services provided by the solid waste management district.

Part of your question has been previously answered in 40 Op. Att'y Gen. No. 22 at 85 (1983). In that opinion, Attorney General Greely held that a refuse disposal district could impose a service fee under section 7-13-231, MCA, on all properties within the district even though some of the property owners did not use the services provided by the district. Attorney General Greely explained that although some of the property owners did not use the facilities of the district, their property was benefitted by the availability of the services. 40 Op. Att'y Gen. No. 22 at 86. It was noted that the link between the services and the benefit to the property was "underscored by the fact that unpaid service charge fees become a lien on the property under the provision of section 7-13-233, MCA." 40 Op. Att'y Gen. No. 22 at 87.

Although the 1991 Legislature amended sections 7-13-231 and 7-13-233, MCA, through the passage of Senate Bill 189, the provisions of those sections, interpreted in 40 Op. Att'y Gen. No. 22, remain essentially unchanged. Accordingly, the holding in 40 Op. Att'y Gen. No. 22 remains unaffected by the actions of the 1991 Legislature. I conclude, in accordance with the reasoning expressed in 40 Op. Att'y Gen. No. 22, that a solid waste management district can impose a service fee under section 7-13-231, MCA, on all properties within the district even though some of the property owners may choose not to use the services provided by the district.

Your next concern is whether those service charges imposed on all properties within the solid waste management districts could be utilized to repay loans

and revenue bonds issued pursuant to section 7-13-236, MCA. Section 7-13-236, MCA, is a new code section created by Senate Bill 189. Under this section, revenue bonds issued by the county commissioners or loans undertaken by the county commissioners may be repaid from "service charges authorized in 7-13-233 that are collected other than through tax notices and a lien upon property." § 7-13-236(3)(a), MCA. The language used by the Legislature in the above section is restrictive in nature. 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 intention of the Legislature must first be determined from the plain meaning of the words used. Missoula County, 701 P.2d at 992. I conclude that an examination of section 7-13-236(3)(a), MCA, reveals that the Legislature clearly intended that service charges may be used to repay revenue bonds and loans as long as those service charges "are collected other than through tax notices and a lien upon property." This conclusion is supported by my recent holding in 44 Op. Att'y Gen. No. 19 (1991), concerning a joint solid waste management district's ability to use services charges to pay off revenue bonds. In that opinion, I reviewed a statute parallel to section 7-13-236, MCA, and concluded that under section 7-13-308, MCA, "[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." (Emphasis added.) 44 Op. Att'y Gen. No. 19.

In summary, section 7-13-236(3)(a), MCA, prohibits payment of revenue bonds and loans by service charges that are collected through tax notices and liens upon property. However, section 7-13-233(4), MCA, authorizes waste management districts to collect service charges by means other than placing the service charges on property tax notices. 44 Op. Att'y Gen. No. 19. Furthermore, section 7-13-233(5), MCA, states that if those charges are not paid, "the service charge becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes." 44 Op. Att'y Gen. No. 19. Accordingly, under section 7-13-236, MCA, the county commissioners may repay revenue bonds and loans from service charges that are collected by means other than placing those service charges on property tax notices. 44 Op. Att'y Gen. No. 19.

THEREFORE, IT IS MY OPINION:

1. A solid waste management district is not a political subdivision for purposes of the Municipal Finance Consolidation Act.
2. A solid waste management district may impose service charges on all property within the district to repay loans and revenue bonds issued pursuant to section 7-13-236, MCA, as long as those service charges are not collected through tax notices and a lien upon property.

Sincerely,

MARC RACICOT  
Attorney General