

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 23, 1985

The meeting of the Local Government Committee was called to order by Chairman Paula Darko on March 23, 1985 at 12:00 noon, in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Kadas, who was excused.

CONSIDERATION OF SENATE BILL NO. 372: Senator Gage of District 5 appeared before the committee as sponsor of this bill, which requires the county treasurer to invest the money of any district as directed by the trustees of the district within three working days. Senator Gage said they had a situation in their county where they are having problems with their county treasurer, and he felt it is a problem in many areas, so this bill is warranted. Their county had received an excess of \$600,000 from the state, and before the end of the month, the county treasurer went on vacation and did not invest that money. The money sat for five weeks without drawing interest. That should not be happening to county money. It cost the taxpayers of the state in excess of \$3,000 to \$4,000 by not having that money invested.

PROPOSERS: Gloria Paladichuk, representing the County Treasurers Association, said the association does not condone such actions. This is a minority, but it has happened throughout the state in four cases that she knows of. This bill will not affect the counties on a unified program.

OPPOSERS: There were no opposers present.

DISCUSSION OF SENATE BILL NO. 372: Rep. Pistoria asked Senator Gage if three days is enough time to invest the money. Senator Gage replied three days is very generous, and felt it should be one day.

In closing, Senator Gage said the biggest majority of the treasurers are doing a fine job in this, and that it is too bad that there have to be laws for this purpose because of the minorities.

CONSIDERATION OF SENATE BILL NO. 181: Senator Haffey of District 33, told the committee he is presenting the bill by request of the Lieutenant Governor's office. This bill is to revise and clarify provisions relating to local government study commissions; providing procedures for handling tie votes and write-in candidates for election to a study commission. Local government review is now optional; about half of the local governments voted to have this review, and

the Lieutenant Governor's office has taken on the task. The 1983 Legislature put in place laws relating to alternatives consistent with optional governmental review. One of them is of replacing a person, on page 2. On page 5, it adds what was inadvertently omitted when the laws were put in place. That was the opportunity to consolidate one or more services. That is the essence of the bill.

PROPOSERS: Richard Rader, representing the Lieutenant Governor's office, told the committee he would answer questions if there were any.

Alec Hansen, League of Cities and Towns, said they are a proponent of the bill. It simply clears up the local government review process. These people are elected.

OPPOSERS: There were no opponents present.

DISCUSSION OF SENATE BILL NO. 181: Rep. Poff said he was under the understanding that the study commission could recommend amendments. Senator Haffey said without this bill, the local governments doing the review do not have that authority.

In closing, Senator Haffey said he participated in the 1974 - 1977 first review, and in his opinion, it was a very nice democracy in action. They are now struggling with it, and are trying to improve their local governments.

He told the committee he would appreciate it if anyone would carry the bill.

CONSIDERATION OF SENATE BILL NO. 265: Senator Mohar of District 1 told the committee he is carrying this bill at the request of the Department of State Lands. The main purpose of the bill is to allow the department to lease lands. There are 25,000 acres of state lands within three miles of the 10 most populated areas in Montana. Many banks will not loan on a short-time lease. They will now lease from 25 to 30 years. It does not affect the lease period of 10 years on agricultural lands.

PROPOSERS: Dennis Hemmer, Commissioner, Department of State Lands, presented written testimony which is attached as exhibit 1. This bill will give the Board of Lands another tool for making more money.

OPPOSERS: There were no opponents present.

DISCUSSION OF SENATE BILL NO. 265: Rep. Switzer asked about section 3 regarding the sales of land, which eliminates the requirement of cities and towns to sell these lands, and he

wondered what the reason for that was. Senator Mohar told him the reason for that is if for some reason the state wants to sell the land, the lease would prevail. The person can hold onto that land for a period of 40 years.

Mr. Hemmer said when they go into a long-term lease, if they sell the lease, the lease goes with the land. This will do away with that.

In closing, Senator Mohar said he would be honored if his representative (Rep. Darko) would carry the bill.

The committee then went into executive session for action on bills.

DISPOSITION OF SENATE BILL NO. 372: Rep. Switzer moved that HB 372 BE CONCURRED IN, seconded by Rep. Poff. Question being called for, motion PASSED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 181: Rep. Hansen moved that SB 181 BE CONCURRED IN, seconded by Rep. Gilbert.

Rep. Wallin said he did not understand what it does clarify. Lee Heiman, Committee Counsel, said there was a meeting of all study commissions in the state in December. They wanted it to say that it wasn't just the study commission. They decided to just clear it up where they had questions, and the Lieutenant Governor's office agreed they were valid questions.

Rep. Sands asked what the method is for approving the problem. Lee Heiman explained the recommendation is that after a preliminary and final report has been made, it then goes to a jurisdictional interlocal kind of vote.

Senator Aklestad arrived; therefore, the committee adjourned from executive session.

CONSIDERATION OF SENATE BILL NO. 88: Senator Aklestad of District 6, sponsored SB 88. This bill requires a city under certain circumstances to dissolve its police retirement fund, to pay the state's prior contribution to the general fund, and to transfer any money remaining in the fund to the city general fund. The city of Shelby had received some money from the state for their retirement system to help train their policemen. It says now that half of that money has to go back to the state and half to the city. The city has gone along with that reluctantly.

PROPOSERS: Alec Hansen, League of Cities and Towns, said this is a potential problem for every city and town in Montana that has gone to a consolidated police department. He hoped the committee would agree with Senator Aklestad and concur in this.

OPPONENTS: There were no opponents present.

DISCUSSION OF SENATE BILL NO. 88: Rep. Fritz asked Senator Aklestad if this act really doesn't go into effect until the fund is totally dormant, with no indebtedness left. Senator Aklestad replied that everyone would have to be satisfied.

Rep. Sands asked Senator Aklestad how it is determined what amount is appropriated to the state, that 50% was mentioned. Senator Aklestad answered that was the estimated amount which Shelby had to pay back. He felt that the state is getting back more than what they sent in. Most of that money was used for police training, and most of it was used up.

In closing, Senator Aklestad said he did not have anyone to carry the bill. Rep. Fritz volunteered to carry it.

The committee went into executive session again for action on bills.

DISPOSITION OF SENATE BILL NO. 181: Lee Heiman explained Rep. Sands' question. He said there is a set of formal recommendations which go to the vote of the people. There is also a series of supplementary reports that are given to the governing body to do with as they want. Their formal recommendations are voted on. The people elected for the city have to vote on the city, and those elected by the county have to vote on the county.

Rep. Switzer said he knows of cases where the people didn't know what they were doing when they voted, and were later horrified about what they had done. He felt it should be described more thoroughly than in past elections. He also felt this problem is greater than identifying for ties on vacancies, and that a lot of people don't understand issues on ballots.

Executive action adjourned again as Senator Mazurek arrived to present his bill.

CONSIDERATION OF SENATE BILL NO. 204: Senator Mazurek of District 23 said he is introducing this bill at the request of the Lewis and Clark Park Board. This bill is including county park and recreational complex funding with funding for certain county cultural, social, and recreational facilities; providing that the 2-mill property tax funding for such parks and facilities may be initiated by petition and approved by the electorate, and providing an exception for currently levied taxes. Senator Mazurek stated that currently there does exist in the statutes an authorization for a 2-mill levy for property tax funding for parks and facilities, and the county commissioners can impose that if they elect to. The Attorney General determined that this permissive levy could be used for parks. This bill will leave that

2-mill levy in place. If the county commissioners don't want to impose this 2-mill levy, the electors of the county could petition and submit it to the voters, who could decide. He urged the committee's concurrence.

PROPOSERS: Robert Ryan, representing the Lewis and Clark County Parks Legislative Committee, submitted written testimony in favor of this bill, which he read to the committee. This is attached as exhibit 1.

Bob Murdo, Lewis and Clark County Park Board, passed out two handouts. The first one is a copy of the state law of park funds (exhibit 2). The second one shows how park boards are funded (exhibit 3). The problems that they have had and the reasons for the bill was not only through the Attorney General's office. This bill would authorize a different option allowing a permissive or vote levy, and it is necessary for developing parks in this state.

OPPOSERS: There were no opposers present.

In closing, Senator Mazurek told the committee that when this bill was drafted, he sent his opinions to the council. However, he had not been clear in his instructions. That is why the language on page 1, lines 17 and 18 are stricken. They are changing by adding parks and cultural facilities to the present statute, but he did not want to take permissive levy and make it vote in every instance. That is the reason for that change.

DISCUSSION OF SENATE BILL NO. 204: Rep. Kitselman asked Senator Mazurek if cultural facilities could also be libraries and museums. Senator Mazurek answered that it could be, but there is already existing levies for museums and libraries. It could be for bandstands or dance halls. He said the only problem was that he did not take the time to determine what a cultural facility was before the bill was drafted. He only wanted it to include parks.

Rep. Hansen asked if this was an additional 2 mills, and Senator Mazurek answered no, that this is a permissive 2-mill levy. If the commissioners didn't levy it themselves, the people could request it if they wanted it.

Rep. Pistoria asked Senator Mazurek if the 5% on page 2, line 9, wasn't a little low. Senator Mazurek said that in other places where they have petition by the voters, this is the existing requirement. Rep. Pistoria asked him if he would have any objections to increasing it to 10%. Senator Mazurek said he would recommend that if there is a precedent for 10%, then use 10%. However, it is important to use consistency.

Rep. Fritz asked how parks are funded now, if they don't do it from the general fund. Senator Mazurek answered that they are funded from the general fund. It is going to be a local decision of where the 2 mills are spent.

Rep. Hansen asked if a county is already levying that 2-mill permissive levy, can they do any more, and can they come in and change it? Senator Mazurek told her no.

Mr. Ryan said they are now funded with revenue sharing and if that should be dropped if things are tight, the electors would ask the commissioners to ask the people, and take it to the voters.

The reason for this option is to take it to the people to vote if they want a park system. And if so, they will have to fund it.

Senator Mazurek said Rep. Jan Brown would carry this bill.

The committee then went into executive session again for action on bills.

DISPOSITION OF SENATE BILL NO. 181: Question being called for on Rep. Hansen's motion of BE CONCURRED IN, and motion PASSED UNANIMOUSLY. Rep. Hansen volunteered to carry it on the floor.

DISPOSITION OF SENATE BILL NO. 88: Rep. Fritz made the motion of BE CONCURRED IN, seconded by Rep. Kitselman. Question being called for, motion PASSED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 265: Rep. Sales moved that SB 265 BE CONCURRED IN, seconded by Rep. Brandewie.

Rep. Sales moved to amend page 2, line 16 and leave in town and city lots, as he can't imagine tying up the sale of a piece of property because it has a lease on it. Rep. Brandewie told him he was reading it wrong. Leased lands such as agricultural and grazing lands should be at the disgression of the board. Town lots should not be up for sale if they are leased for 40 years.

Rep. Sales asked if it would make any sense to restrict sale of the ground, and Lee Heiman explained the person who buys your land has to honor the lease. Rep. Sands asked why agricultural lands shouldn't be included as well as city and town lots.

Rep. Sales then withdrew his amendment.

Local Government Committee

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Rep. Sands then moved to amend by striking section 3, all of 77-6-106 on page 2, lines 14 through 21. Rep. Brandewie said by striking that section, the buyer is subject to the lease of the lease holder. Rep. Sands said this section requires it, but he is saying it should be their option. Rep. Brandewie said a person knows that land he is leasing is subject to later sale. It could be sold, but it would be sold knowing that the lease would go with the land. Rep. Sands felt if that is the meaning that Rep. Brandewie gives to this section, he doesn't see any need to take the language of town and city lots out of it. It would provide that any time the lands were sold, the lease would be terminated. Rep. Brandewie said that is what this section says. That is why they want to take out city lots. No one wants to buy and then put up buildings.

Rep. Sales said he wants a bill that is subject to the lease, and he does not care if it is agricultural, city or not.

Chairman Darko suggested action be postponed on SB 265, and moved to Tuesday's meeting, which would take place at 5:00 p.m. after they adjourned from the floor. Also, HB 804 would be coming back.

There being no further business before the committee, the meeting was adjourned at 1:10 p.m.


PAULA DARKO, Chairman

(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

LOCAL GOVERNMENT COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Mar. 23, 1985

NAME	PRESENT	ABSENT	EXCUSED
<u>Paula Darko, Chairman</u>	✓		
<u>Norm Wallin, Vice Chairman</u>	✓		
<u>Ray Brandewie</u>	✓		
<u>Dave Brown</u>	✓		
<u>Harry Fritz</u>	✓		
<u>Stella Jean Hansen</u>	✓		
<u>Bob Gilbert</u>	✓		
<u>Mike Kadas</u>			✓
<u>Les Kitselman</u>	✓		
<u>Paul Pistoria</u>	✓		
<u>Bing Poff</u>	✓		
<u>Walter Sales</u>	✓		
<u>Jack Sands</u>	✓		
<u>Dean Switzer</u>	✓		

STANDING COMMITTEE REPORT

March 23, 19 85

MR. **SPEAKER:**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **SENATE** Bill No. **99**

THIRD reading copy (**BLUE**)
color

**PERMITTING TRANSFER OF MONEY IN POLICE RETIREMENT FUND TO
CITY GENERAL FUND.**

Respectfully report as follows: That **SENATE** Bill No. **99**

BE CONCURRED IN
XXXXXX
DO PASS

..... **PAULA BARRO,**
Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 23, 19 35

MR. **SPEAKER:**

We, your committee on **LOCAL GOVERNMENT**

having had under consideration **SENATE**

Bill No. **372**

THIRD reading copy (**BLUE**)
color

**REQUIRE COUNTY TREASURER TO INVEST SCHOOL MONEY WITHIN
3 DAYS OF REQUEST.**

Respectfully report as follows: That **SENATE**

Bill No. **372**

BE CONCURRED IN

~~DO NOT~~
DO PASS

STANDING COMMITTEE REPORT

March 23, 19 85

MR. SPEAKER:

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 181

THIRD reading copy (BLUE color)

LOCAL GOVERNMENT STUDY COMMISSIONS - REVISION AND CLARIFICATION.

Respectfully report as follows: That SENATE Bill No. 181

BE CONCURRED IN
XXXXX
DO PASS

Exhibit 1
SB 265
3-23-85
Senator Mohar

TESTIMONY ON SENATE BILL 265

DENNIS HEMMER, COMMISSIONER, DEPARTMENT OF STATE LANDS

The Department of State Lands supports passage of Senate Bill 265 that would extend the maximum lease term to 40 years for commercial leasing of state-owned property. State lands are becoming increasingly valuable for leasing for other uses other than grazing and agriculture due to the growth of urban centers in Montana. The Department estimates that there are approximately 25,000 acres of state lands within 3 miles of the 10 most populated cities in Montana. Many of these lands may be utilized for commercial development thus realizing an increased revenue to the trust.

The passage of the legislation gives the Board the flexibility to issue commercial development leases for up to 40 years. Many lending institutions will not grant loans to interested parties on a lease that is issued for 25 years. A 40 year lease term would conform to the policy and requirements of lending institutions.

The statute would also be changed to ensure that if the state decided to sell the property the lease would go with the sale. This is necessary before a developer is going to place a structure on leased property.

The Board of Land Commissioners has been consulted regarding these purposed changes to the law and by motion has supported them. I would ask your passage of S.B. 265 as a means of increasing the income to the school trust.

Exhibit 1
SB 204
3-23-85
Senator Mazurek



TO: HOUSE LOCAL GOVERNMENT COMMITTEE
FROM: L. & C. CO. PARKS LEGISLATIVE COMMITTEE
RE: S.B.#204 FUNDING AUTHORITY FOR COUNTY PARKS

Madam Chairman, members of the committee,

My name is Robert Ryan and I am a member of the legislative committee for the Lewis and Clark County Park Commission.

The purpose of S.B.204 is to clarify the existing park laws and to provide a tool by which on a county option, as the need arises, for a means to finance the operation and maintenance of county parks. In the past the existing law pretty much left it up to the opinion of the individual County Attorneys whether it was legal to impose a mill levy for this purpose.

Then on April 25th 1984 on a request from the County Attorney of Yellowstone County the Attorney Generals office issued an opinion, # 49, that under existing laws a mill levy was not legal to fund the operation and maintenance of county parks, Revenues from the sale of land, cash donations, and money in lieu of park land dedication from subdivisions were restricted and could only be used to buy additional park lands or for initial development of parks. These funds could not be used for the operation and maintenance of these parks.

He did find however that under existing laws County Commissioners could fund operation and maintenance out of the general fund. During the thirteen years that I served on the Lewis and Clark County Board of Park Commissioners I had the pleasure of working with thirteen different County Commissioners over this period and not one would fund county parks out of the General Fund. The reason being, the many other things with higher priority that must be funded from the General Fund. By the time these obligations were met there just was never any monies for park funding. Many many times during my tenure on the Park Board people would come to the Board requesting that a park be developed in their area, and just could not except as taxpayers why

there were no funds available for development and maintenance of such parks. As a result their requests had to have limited development money from Revenue Sharing Funds, but no monies for long term maintenance, or refused by the Board.

Senate Bill # 204 by no means is a substitute for House Bill # 496 recently passed by the House. It is another form of financing the operation and maintenance of County Parks.

Larger counties that have chosen a full Board of Park Commissioners, and have prepared a comprehensive park plan and park land inventory have set the guide-lines for planning and park development. Counties that have several parks to maintain would probably choose Senate Bill # 204 as a means to finance the operation and maintenance of these parks.

More rural counties with an Advisory Park Board and one or two parks would probably find financing such parks through Park Districts is more feasible. This is what House Bill # 496 would do.

I believe each county must choose what kind of parks program is best suited for their county and then choose the form of financing available.

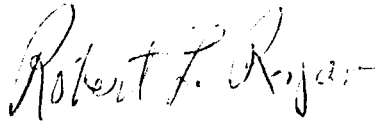
The biggest difference between a full Park Commission and the Park District form is that the Park Commission does the planning and sets the standards and guidelines for parks for the entire county. The Park District on the other hand forms a set of Park Commissioners for each district and these commissioners set the guidelines for their particular park. Under this form they are not responsible to a County Park Board, only to the taxpayers in their district.

The latest concept of park development is to develop large open space multi use type parks rather than the old concept of neighborhood parks with lots of trees and shrubery. The reason for this is to accommodate the many different types of use activity such as football, baseball, softball, Y.M.C.A. soccer, track, ice skating and others. Also there is less maintenance to a multi use park as apposed to six or eight neighborhood parks. To build this type complex you just don't find the 10 to 20 acres of land needed inside the city limits. Most of these type complexes are built on the outskirts of the city limits in the county where land is available, but 95% of the people using these complexes is generated from the city residents.

In Lewis & Clark County at present the City people are not paying taxes for the use of these parks because the county program at present is funded with Revenue Sharing.

If and when the Federal Government cuts this funding Senate Bill # 204 would give a county Park Board the means to take the question of funding for county parks to the electors of a county and they would decide whether they wanted to fund a county parks program,

Thank you for your consideration on this matter.

A handwritten signature in cursive script that reads "Robert L. Ryan".

Robert L. Ryan

COUNTY GOVERNMENT - County park board funding and administration of finances;

PARKS - Funding from county general fund;

PARKS - Separation of restricted and unrestricted county park revenues;

PUBLIC FUNDS - Interest credited to county general fund;

PUBLIC FUNDS - Separation of restricted and unrestricted county park revenues;

TAXATION AND REVENUE - Authority to levy special tax for county park fund;

MONTANA CODE ANNOTATED - Sections 7-6-204, 7-6-2311 to 7-6-2321, 7-6-2501, 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, 7-16-2301, 7-16-2302, 7-16-2321, 7-16-2324, 7-16-2327, 7-16-2328, 7-16-2329, 76-3-606.

- HELD:**
1. A county park board does not have the authority to levy a special tax for park purposes.
 2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324 and 76-3-606, MCA.
 3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.
 4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

25 April 1984

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

(2)

You have requested my opinion on several questions relating to the funding and management of finances of county park boards, as follows:

1. Is a county park board, formed pursuant to Title 7, chapter 16, part 23, MCA, limited in its spending authority to the proceeds arising from "the sale of hay, trees, or plants or from the use of or leasing of lands and facilities," or may such board submit an annual budget request in excess of such nontax revenues, funding the excess with a special ad valorem tax mill levy? If a mill levy is authorized, is there any limit to the number of mills which may be levied for park purposes?
2. Are the general fund and park board fund methods of funding county park operations mutually exclusive, or may they be utilized in combination?
3. In order to effectively administer the mandates of sections 76-3-606(2) and 7-16-2324(4), MCA, may either a board of county commissioners or a county park board create a separate fund apart from the park board operating fund, to account for revenues whose use is restricted to "the purchase of additional lands or for the initial development of parks and playgrounds"?
4. Assuming that the restricted cash in lieu of dedication and land sale revenue can be invested, must the interest earned be used only for the purchase or initial development of parks, or could the interest be used to fund the park board's operations?

A county park board created pursuant to Title 7, chapter 16, part 23, MCA, is a department of county government with powers specifically provided by statute. § 7-16-2301, MCA. The park board consists of the county commissioners and six other persons. § 7-16-2302, MCA. The park board is authorized to pay all obligations arising from the performance of its statutory duties and may also incur an indebtedness on behalf of the county. §§ 7-16-2321, 7-16-2327, MCA.

You wish to know whether the county park board is authorized to levy a separate tax to finance its obligations. The relevant statutes provide:

All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund. [§ 7-16-2328, MCA.]

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The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund. [S 7-16-2329, MCA.]

(Emphasis added.)

Before a governing body may impose a tax, it must have clear and specific authority providing for the imposition of that tax. Burlington Northern v. Flathead County, 176 Mont. 9, 575 P.2d 912 (1978). Tax statutes are strictly construed against the taxing authorities and in favor of the taxpayer. Id. Usually the Legislature expressly and specifically gives authority for special tax levies and sets specific mill limits on such special taxes. See, e.g., §§ 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, MCA. While the Legislature need not use the words "authorized to levy a tax," it must do more than merely refer to a special fund. Burlington Northern v. Flathead County, supra. In Burlington Northern, the Montana Supreme Court held that a special tax was authorized by statutes which directed the county superintendent to determine the retirement fund levy requirement and to "fix and set" the retirement fund levy. The park board law does not meet the degree of specificity required by Montana law to authorize the imposition of a separate tax. The statutes in question merely allow the county treasurer to establish a separate fund for park purposes.

While a separate tax for park purposes has not been authorized by the Legislature, it is clear that the Legislature did not intend to limit the park fund to the money raised by sale of hay, trees or plants or by lease of lands and facilities. Such a construction would render meaningless the references in sections 7-16-2328 to 2329, MCA, to moneys raised by tax for park purposes. It is presumed that the Legislature does not pass meaningless legislation, and statutes relating to the same subject are to be harmonized, giving effect to each. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981). The park board law must be read together with the county budget law, Title 7, chapter 6, part 23, MCA. As a department of county government, the county park board must file estimates of probable revenues from sources other than taxation and of all expenditures required for the next fiscal year. § 7-6-2311, MCA. Based upon this information from all departments, the county commissioners prepare the budget, determine the amount to be raised by tax for each fund, and fix the general tax levy. §§ 7-6-2311 to 2321, MCA. Since a specific separate tax levy is not authorized for the park fund, additional money must be appropriated from the county general fund authorized by section 7-6-2501, MCA, if the revenue from sources other than taxation is insufficient to meet the necessary expenditures.

Your third and fourth questions concern the administration of certain restricted revenues raised from sale of park lands and from cash donations in lieu of dedication of land for park purposes pursuant to sections 7-16-2324 and 76-3-606, MCA. Revenues from these sources are restricted in use to the sole purpose of the purchase of additional lands or the initial development of parks and playgrounds. §§ 7-16-2324(4)

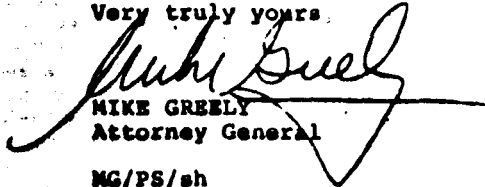
(4)

and 76-3-606(2), MCA. While these revenues are a part of the park fund, they should be separated from unrestricted park fund revenues, either through separate bank accounts or through acceptable accounting procedures, so that the restricted revenues are used solely for the authorized purpose. The interest earned from the deposit or investment of the restricted and unrestricted portions of the park fund must be credited to the general county fund in accordance with section 7-6-204(1), MCA.

THEREFORE, IT IS MY OPINION:

- ✓ 1. A county park board does not have the authority to levy a special tax for park purposes.
2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324 and 76-3-606, MCA.
3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.
4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

Very truly yours,



MIKE GREELY
Attorney General

MG/PS/sh

Cash-in-lieu of dedication of parks in the subdivision process is restricted to use for the purchase of additional lands or for the initial development of parks and playgrounds.

76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.

Use of proceeds from the sale, lease or exchange of County parkland is similarly restricted.

7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

* * *

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 for cash received in lieu of dedication.

1984 County Park Board Survey

Cascade	Flathhead	Gallatin	Lewis & Clark	Missoula	Ravalli
—	YES	YES	YES	YES	YES
—	YES also project location	YES	YES	YES	YES
see (5) below	YES	YES	YES	YES	see (5) below
—	YES	YES	YES	YES	YES
development funds are considered loans	whenever possible	YES applying group must meet maintenance provisions no matching fund requirement	policy being formulated	50% match as cash or donated materials	sponsoring organization must agree to maintain park and have capacity to do so match with labor, material, equipment, or cash responsible citizen organizations
"community" park boards	public use projects when development is proposed for a county park	any interested group, generally homeowners associations	any interested group		
payment-in-lieu	county general budget	payment-in-lieu	payment-in-lieu	payment-in-lieu	payment-in-lieu
2 grants from Bureau of Outdoor Recreation	self-supporting facilities user fees land lease facility rental		revenue sharing for county recreation complex	development is done slowly and only with groups keeping demonstrated track record of maintaining their park	
—	enabling legislation for a park fund levy	—	enabling legislation for park fund levy		legislative change is needed
NO	YES	NO	YES	NO	NO

Countries

information requirements from project sponsors requesting development funds:
description of proposed improvements
drawing of project proposals
funding sources
maintenance plans
matching fund requirement
eligible groups

pending sources for county park development

questions for increasing funding capability

opening county parks legislation to '85 Legislature

Exhibit 3
SB 204
3-28-85
Senator
Mozum

TESTIMONY IN SUPPORT OF LOCAL OPTION TAXING AUTHORITY SUBMITTED BY KAY FOSTER, CITY COUNCILMEMBER, BILLINGS, MT, PRESIDENT OF THE MONTANA LEAGUE OF CITIES & TOWNS, AND MEMBER OF THE GOVERNOR'S COUNCIL ON ECONOMIC DEVELOPMENT.

ALTHOUGH I AM UNABLE TO APPEAR BEFORE THIS COMMITTEE, I WISH TO EXPRESS MY SUPPORT FOR LEGISLATIVE AUTHORIZATION OF LOCAL OPTION TAXING AUTHORITY WITH LOCAL VOTER APPROVAL. THIS IS A MOST IMPORTANT STEP IN ALLOWING CITY AND COUNTY GOVERNMENT OFFICIALS THE OPPORTUNITY TO SOLVE SOME OF THEIR OWN FINANCIAL PROBLEMS.

MONTANA'S LOCAL GOVERNMENTS ARE EXTREMELY DIVERSE, AND THE SOLUTIONS TO OUR FINANCIAL PROBLEMS MUST ALSO BE DIVERSE. AN ACCEPTABLE TAX IN BILLINGS MIGHT BE QUITE UNACCEPTABLE IN TROY. WEST YELLOWSTONE'S TAX PROBLEMS CANNOT BE SOLVED IN THE SAME MANNER AS BOULDER'S. STATEWIDE SOLUTIONS TO LOCAL FINANCE PROBLEMS HAVE TO TREAT ALL CITIES AND TOWNS AS IF THEY WERE THE SAME AND, THEREFORE, MOST OFTEN THIS TREATMENT IS AVOIDED ALTOGETHER.

THAT LEVEL OF GOVERNMENT CLOSEST TO THE PEOPLE IS BEST ABLE TO DETERMINE THE SOLUTIONS WHICH WILL LEAD TO THE IMPROVED FINANCIAL HEALTH OF A COMMUNITY. IF A SOURCE OF REVENUE IS CHOSEN WHICH DOES NOT MEET WITH CONTINUED VOTER APPROVAL, THEY HAVE IMMEDIATE ACCESS TO LOCAL OFFICIALS WHO CAN ACT AT THEIR NEXT MEETING RATHER THAN WAIT FOR THE NEXT SESSION OF THE LEGISLATURE. IT REMAINS DIFFICULT FOR ME TO UNDERSTAND WHY STATE OFFICIALS WANT THE RESPONSIBILITY FOR FINANCING LOCAL GOVERNMENT SERVICES WHEN THEY COULD SHIFT THIS RESPONSIBILITY TO THE LOCAL LEVEL WITH ADEQUATE AUTHORITY TO DO THE JOB.

THE FISCAL NEEDS OF LOCAL GOVERNMENT ARE BEING RECOGNIZED BY THE MONTANA LEGISLATURE, BUT THE MEANS TO IMPROVE THE QUALITY OF LOCAL SERVICES CONTINUES TO BE DENIED. STATE GOVERNMENT CANNOT CONTINUE TO DENY THE AUTHORITY TO FINANCE THE NECESSARY LEVEL OF SERVICE AND ALSO REFUSE TO PROVIDE STATE FUNDS TO REACH THIS LEVEL. I URGE YOU TO LET LOCAL VOTERS DECIDE HOW TO FINANCE THE LEVEL OF MUNICIPAL SERVICE IN THEIR COMMUNITIES BY ALLOWING THIS LOCAL OPTION TAXING AUTHORITY.

THANK YOU.

March 21, 1985

