MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on March 17, 1993, at 8:00 a.m.

ROLL CALL

Members Present:
Sen. Mike Halligan, Chair (D)
Sen. Dorothy Eck, Vice Chair (D)
Sen. Bob Brown (R)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. Spook Stang (D)
Sen. Tom Towe (D)
Sen. Fred Van Valkenburg (D)
Sen. Bill Yellowtail (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Bonnie Stark, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 426, SB 427, HB 413
Executive Action: HJR 3

HEARING ON HB 413

Opening Statement by Sponsor:

Rep. Joe Quilici, House District #71, presented HB 413, which is a Department of Revenue (DOR) bill clarifying the method of determining the Public Service Commission (PSC) fee and the Consumer Counsel (CC) fee. Under the current rate-setting method, the possibility exists that at one time too many funds may be collected, and not enough funds collected another time. This legislation assures that whatever the Legislature appropriates, that is the amount of revenue that will be generated from industry fees and deposited into the special revenue fund for the Consumer Counsel.

Proponents' Testimony:

Brian Smith, Economist with the DOR, said the DOR has drafted this bill in order to establish a clear, consistent and uniform rate-setting method for both the PSC and CC fees. They feel this new method will use more recent information to increase the accuracy of the rate-setting process, it will raise the amount appropriated by the Legislature, and it will mandate any revenue short-fall and overage to the state special revenue fund balance. The tax year for collection of both PSC and CC fees will be changed from July 1 to October 1 of each year. This will allow the DOR to use fiscal-year data on agency expenditures. The due date for filing returns and payment of the fees will also be changed. This will significantly decrease the lag time in reporting gross operating revenues from regulated utilities, and will assist the DOR in becoming aware of the revenue short-fall or overage earlier and allow them to adjust the rate necessary to increase the tax, or decrease the tax rates and appropriations.

Bob Anderson, Chairman of the PSC, spoke in support of HB 413 as it was first introduced in the House. Mr. Smith explained the basic problem, lags in collection of the tax, and swings--either too much collection, or too little--depending on a number of factors beyond anyone's control. Factors, such as the weather, affects utility revenues. HB 413, as originally introduced, would correct that problem in two ways. One is the way Mr. Smith described by refining the collection mechanisms. The other way, which the House amended out of the bill, would change the funding mechanism from the general fund to a special revenue account, exactly as exists for the Montana Consumer Counsel. Having the tax flow through the general fund creates two illusions, according to Mr. Anderson, that are problematic to the Commission. One is the illusion that changing their budget will affect the general fund. Because of the statutory tax mechanism, that is not the case. The other illusion is that from time to time money collected as part of the tax could be retained by the general fund and appropriated to other agencies. That is a temptation that should not exist and does not exist. This is problematic for the Commission, and Mr. Anderson urged that the bill be amended back to the form in which it was introduced in the House. Mr. Anderson presented Exhibit No. 1 which is an amendment to restore HB 413 to its original draft. This would allow the Commission to be taxed and the mechanism treated exactly as the Consumer Counsel is taxed.

John Alke, Montana Dakota Utilities (MDU) representative, spoke in support of HB 413 and the amendment offered by the PSC. Mr. Alke said it was very important to the industry when both the Consumer Counsel tax and the PSC tax were established, that the tax be clearly a funding mechanism only for the PSC. The structure has always been that way. The Legislature determines the appropriation for the PSC, and the DOR splits that appropriation between the various rate lading utilities. When MDU agreed to that process, it was very important to them that it

be clearly established that the general fund could not make money off that tax. That has always been the structure, and there is a crediting mechanism in there that if there is an over-collection, the utilities get the benefit of that in the next year's tax calculation. MDU thinks, like the PSC does, that it is appropriate to leave it in a special revenue account. If it is treated as general fund money, it causes problems because the utilities will always get credit for any overpayment that occurs under the tax. For clearness sake, and for symmetry sake, since the MCC tax is a special revenue account, MDU thinks the PSC tax should be a special revenue account. Originally it was set up that way, and was amended from a special revenue account to the general fund.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Van Valkenburg asked Rep. Quilici asked why HB 413 was amended in the House. Rep. Quilici said his understanding is that for an executive agency, even though the funds were state special funds, the House wanted to put the funds under the general fund so the Legislature would take a closer look at all budgets. Usually state special funds are not scrutinized as much as general fund monies.

Senator Van Valkenburg asked if this Committee would adopt the amendment presented by Mr. Anderson, what is the likelihood the House will concur in the bill as amended. Rep. Quilici said with the makeup of the House, he thinks the bill will end up in a conference committee.

Senator Towe asked Mr. Smith how the mechanism used for determining appropriations, set out on Page 3 of HB 413, is different from what is being done now. Mr. Smith said it is essentially no different than what is currently being done; this would just clarify some issues such as the code not allowing for increasing the amount to be raised by the fee in a year, more than what was appropriated. The DOR thinks this is appropriate when in the prior year, the tax did not raise enough to meet the appropriation. This would give the DOR the authority to do what is being done now and would clarify the code. This bill also changes the dates for filing. Mr. Smith said the essential mechanism is still the same where the DOR basically takes the appropriation, minus any unspent revenue from the prior year, and uses that as a requirement to raise that amount from the gross operating revenues of utilities.

Senator Towe asked why the bill is retroactive to April 1st when the filing isn't until August 31st. Mr. Smith replied that otherwise they would have to apply the rate-setting method as current law exists, and by May 30th, they would have to set a new rate, and turn around and do it again in August. They would just as soon start off doing it from the new schedule in August. If the amendment is adopted, the DOR would end up splitting part of the revenue into the general fund and part into the state special revenue fund.

Closing by Sponsor:

Rep. Quilici offered no further remarks in closing.

HEARING ON SB 426

Opening Statement by Sponsor:

Senator Ed Kennedy, Senate District #3, presented SB 426, which was requested by the Senate Local Government Committee in response to the recent Court case involving Carbon County. The legislation was requested because of concern that local governments would not be able to sell their special improvement district (SID) bonds unless legislation is provided to clarify the obligation of local governments to make loans to the SID revolving fund. When local governments sell their SID bonds, they have, in the past, agreed to establish a revolving fund from which they can borrow if the revenue pledged to pay the bonds is insufficient. Local governments have also agreed to levy taxes to loan money to the revolving fund in case the revolving fund is inadequate. The nature of SIDs make necessary some mechanism to handle shortfalls and delays in collecting the assessments. In the Carbon County decision, the District Court found that because the SID was insolvent, the County could not be required to make loans to the revolving fund. The court decision did not offer guidance as to when the agreement to levy taxes for the revolving fund can be enforced. The law for SID bond revolving funds from municipalities are nearly identical to the county law. Most of Montana's larger municipalities and urban counties sell SID bonds every year to pay for water, sewer, paving, curb, and other improvements in developed neighborhoods.

Senator Kennedy said SB 426 clarifies three points: (1) The obligation of the local government to make loans to the SID is not dependent on there being adequate, unpaid assessments to repay the loan; (2) The obligation to make the loan is not subject to restrictions or limitations of other laws; and (3) The obligation to make the loan is not unlimited and the bill defines when the obligation would end.

Addressing concern about how this legislation will affect Carbon County, Senator Kennedy presented an amendment as Exhibit No. 2 which will prevent retroactive application of this legislation to bonds that are currently a subject of litigation. Senator Kennedy said this bill will assure that necessary SID projects can go forward.

Proponents' Testimony:

Mae Nan Ellingson, an attorney with the Dorsey Whitney firm in Missoula, spoke in support of SB 426. Dorsey Whitney has issued opinions on SID bonds in Montana since the late 1940s. Ms. Ellingson presented Exhibit No. 3 to these minutes. Dorsey Whitney believes the purpose of SB 426 is to have the Legislature re-state the law with respect to SIDs. There have been concerns over how SID bonds are issued and the security provided by the revolving fund, but basically, the law has not essentially been changed with respect to the revolving fund. The testimony in Exhibit No. 3 is a sampling of court cases and provisions of the statutes, and it states what the law is so the financial community that has been involved in the bond issues, the issuers of these bonds, have represented to the public what the law is and what their obligations are, and finally, what the people who have purchased these bonds understood the law to be.

Ms. Ellingson said both cities and counties have had the authority to do special assessment districts since 1913. Initially, special assessment districts and special assessment bonds were payable solely from the assessments levied against all of the property in the district that was created by either the city or the county. In 1929, the Supreme Court determined that the purpose of the revolving fund law was to provide additional security for the SID bonds in order to make the bonds marketable. Ms. Ellingson said, based on her experience and observation, when an SID is created, if the only source of repayment is the special assessment levied against the property, the failure of one property owner to pay the special assessment as due creates a default situation. There would not be enough money collected by either the city or the county to pay the principal and interest on the assessments.

Ms. Ellingson said the way the revolving fund currently works, a city or county establishes a revolving fund with three sources of revenue available to that fund. First, since 1983, the city or county can require that 5% of the proceeds of any bonds being issued be deposited into the revolving fund so it creates a cash contribution up front. The other two sources for the revolving fund are a property tax levy on all property in the city or the county in an amount not to exceed 5% of the outstanding principal amount of the total SID bonds outstanding; or, a loan from the county, or the city, general fund. Ms. Ellingson used the City of Missoula as an example of explaining the theory behind revolving funds. If Missoula had 50 separate SIDs, there would be one revolving fund to secure all 50 SIDs.

If there is a default in one SID, the revolving fund is obligated to make the loan to that district fund to pay the principal and interest on that district's bonds when due. The statute clearly provides that when the revolving fund makes that loan to the district fund, it is a loan, and the district ultimately is obligated to repay that loan. To the extent that the county forecloses on the property in the district, takes it to tax sale, there could be adequate money to repay the revolving fund; however, that is not a guarantee. The revolving fund was upheld as being constitutional in 1929, in the case of Stanley v. Jeffries, cited in Exhibit No. 3, and it was litigated again in 1941, in the case of Hansen v. City of Havre, in which the constitutionality of the revolving fund was again upheld. The Hansen case was significant in that it said cities and counties that had issued SIDs, and had created a revolving fund to secure those payments, had no discretion not to make the loan from the revolving fund. The Supreme Court clearly said that the Legislature had made it mandatory that the loan be made if they had issued bonds secured by the revolving fund.

A change was made in the revolving fund law by legislation in 1983 that gave cities and counties an option as to whether or not they would issue bonds secured by the revolving fund; they did not have to pledge their revolving fund and subject the taxpayers to the potential liability. Ms. Ellingson said that even in the legislative record, it is indicative that the revolving fund has always been understood to expose the general taxpayers in a city or county issuing these bonds to a contingent liability in the event that assessments were not adequate.

Ms. Ellingson said the goal of SB 426 is not to ask this Committee to adjudicate the rights of Carbon County; the affects of this bill are not applicable to Carbon County because that matter is in litigation. The reason this bill has come forward is two-fold: (1) An effort to add some certainty with respect to what the bonds are. There is a tremendous dollar volume in outstanding SID and RSID bonds. The five major cities and four major counties alone have $71 million in outstanding SID bonds. (2) Dorsey Whitney is aware of some cities and counties who have projects planned, and they wish to proceed with the issuance of bonds. Dorsey Whitney cannot give an unqualified opinion with respect to the SID bonds. A copy of an opinion they think they can give is attached to Exhibit No. 3; however, some bonding companies may say they cannot market the bonds with that opinion.

Ms. Ellingson sees the purpose of SB 426 as being three-fold. (1) The bill will codify what Dorsey Whitney understands the provisions of the statute have always been, as interpreted by the Court, that if a county or city issues bonds and they secure them with a revolving fund, it constitutes a legal obligation to levy taxes to fund the revolving fund, or they make a promise to loan money to the revolving fund and make the revolving fund loan money to the SID fund, that is an enforceable promise. (2) Dorsey Whitney also believes the obligation to make the loan is

not subject to debt limitations, whether or not they have had a vote of the people. (3) The statute, as currently written, doesn't provide an end date by which a city or county can extinguish their liability with respect to special assessments. It's conceivable, because all that can be levied in any year is up to 5% of the outstanding principal amount of the bonds, that the obligation to the revolving fund could go on forever. This bill puts an end to the obligation to the revolving fund to be the latter of the final maturity date of the bonds, or when the city or county had taken all of the property that is subject to the assessment to tax sale and basically extinguished the lien for the assessment. Ms. Ellingson thinks this third purpose is a significant feature of SB 426 because it is a departure from the existing statute, and she thinks it is one of the reasons why the court in the Carbon County case found that the result there wasn't quite equitable.

Bob Murdo, an attorney with the Jackson Murdo & Grant, PC, firm in Helena, said his firm represented the 230 bondholders in the Carbon County case which they lost in District Court. They are here today to support the amendment to SB 426 to exclude Carbon County from the results of this legislation as far as the litigation is concerned, and also to reiterate what Ms. Ellingson said in that this bill primarily is here to clean up some language and give some clarity to the SID and RSID bond situations in the state. Conceptually, the bill only makes those few changes that Ms. Ellingson suggested. Mr. Murdo agrees with Ms. Ellingson that the most significant deviation from the current state of the law is the situation with regard to the limiting of liability of local governments on an SID or RSID. Mr. Murdo said his law firm also serves as bond counsel for cities and counties and other local governments, but they are not able to give an unqualified opinion because of the uncertainties created by the District Court decision in Carbon County. They would, however, with the passage of this legislation, be able to give a good opinion. Mr. Murdo urged support of SB 426.

John DeVore, Administrative Officer, Missoula County, said his County is very concerned over the future of the RSID program and is in full support of SB 426. Missoula County has been an aggressive user of the RSID program for many yearsand this mechanism has been used to enhance the infrastructure and assist neighborhoods as well as respond to public health and safety issues. Without this vehicle, Missoula County would have no way of responding to these needs. Missoula County requests passage of SB 426.

Anna Miller, Department of Natural Resources and Conservation (DNRC), said the DNRC works on two programs; the coal severance tax bonding program and the state revolving fund loan program. Between those two programs, the State has approximately $10 million in outstanding SIDs and RSIDs, and there are approximately $6 million to $7 million worth of loans that would like to utilize this type of financing. Beginning in

1985, when bonds were sold to the State, it was with the idea that the revolving fund security was there. The DNRC feels it is very important to have that assurance. This is the most logical way to finance improvement systems. Many older, established communities may have a new subdivision wanting to come into the system. Rather than doing a general obligation bond or revenue-type bond, they will want the new people coming into the system to pay for the expense of coming in. Ms. Miller said in so many ways, this is the only logical type of tool that can be used. There is a possibility SID and RSID bonds won't be sold in a private market if the revolving fund security device is not there. That leaves a question: Does the State of Montana want to make an investment in these types of financing without that security in place? Ms. Miller pointed out that many projects can get large Federal grants to come in and help with the projects, but without the security mechanism, those dollars could be lost to projects. The DNRC has learned that when a program comes to them to be financed, they ask that there already be a 75% development in the area. That enhances the security and makes this program work. Ms. Miller presented Exhibit No. 4 to these minutes.

Sharon Stratton, Flathead County Commission Chairman, said they are in full support of SB 426. They have over $5 million in projects waiting to start. One of the biggest projects is the Evergreen Project which will have to be phased into a couple of years. If this project is not approved, the whole county is at risk as far as water quality in Flathead Lake. They have spoken to bond counsel and financial people out of the community, and without a good opinion from bond counsel, and without this bill being passed, Flathead County will not be able to sell those bonds.

Craig Jones, D.A. Davidson & Co., Great Falls, said they have been an ardent supporter of purchasing SIDs and re-marketing the securities to investors to support local governments. They believe SB 426 will do two things: (1) It will clarify and institutionalize the provisions under which issuers, underwriters, legal counsel, and investors, believe they have been proceeding historically. (2) For the first time ever, it provides a date certain by which the revolving fund obligation may end. From an investor's standpoint, it is important to remember that either the revolving fund is pledged and available, or it is not. The Carbon County decision clouds that issue and does not provide the investor adequate support or knowledge that the revolving fund will be there when it is most needed. Mr. Jones said it is important to bear in mind that no one can force an issuer to pledge the revolving fund in the first place. It is an option the local government can elect if they support the project, and if so, D.A. Davidson asks that they stand behind that pledge for the duration of the investment. It is D.A. Davidson's strong opinion that the marketability of SIDs and RSIDs have been significantly impaired by the District Court ruling for Carbon County. Bond counsel is unable to express an

unqualified opinion and can express no opinion on the enforceability of the revolving fund. Without such an opinion, given the practical uncertainty regarding the availability of the security as provided by the pledge of the revolving fund, investors will not provide ready access to the capital marketplace for local governments. He said it is important to understand that SIDs provide a lower cost of capital, and sometimes the only source of capital, for local government infrastructure improvements. Those buyers are not out-of-state investors; they are Montanans. Almost without exception, SIDs and RSIDs are sold to the small investor in this State who loan their savings to local governments for infrastructure improvements. Unless this legislation is enacted, D.A. Davidson fears there will be no local buyers. This legislation will restore this important financing mechanism to local governments. They strongly encourage passage of SB 426.

Jim Wysocki, City Manager of Bozeman, spoke in support of SB 426 for the reasons that were stated by Mr. Craig Jones and Ms. Mae Nan Ellingson, and asked the Committee to pass the bill.

Alec Hansen, League of Cities and Counties, said it is obvious there is a lot of local support for this bill, and the League supports SB 426.

Harry Mitchell, Chairman of the Cascade Board of County Commissioners, spoke in support of SB 426. This bill is a product of foolishness, mistakes and exaggerated expectations that took place in Carbon County nine years ago. Cascade County made the same mistake 11 years ago. Since then, the industry has corrected those problems and they thought everything was fine until this court case came along. Mr. Mitchell asked the Committee to pass this bill to codify what they thought they were operating under, and they will be able to continue to sell bonds for SID projects in Montana.

Gene Huntington, Public Finance Manager for Dain Bosworth, appeared in support of SB 426, and echoed what was presented earlier. His firm is a bidder for municipal bonds and would probably be a very reluctant bidder now until the security for these bonds is clarified.

Nancy Griffin, Montana Building Industry Association, spoke in support of SB 426. In many areas, SIDs are the only form of funding for infrastructure services.

Tom Hopgood, Montana Association of Realtors, spoke in support of SB 426.

Joe Menicucci, City Manager of the City of Belgrade, spoke in support of SB 426 with the amendment, and presented Exhibit No. 9 to these minutes.

Chuck Stearns, Finance Director/City Clerk for the City of Missoula, presented written testimony in support of SB 426 as Exhibit No. 5 to these minutes.

Scott Anderson, Water Quality Bureau, Department of Health (DOH), indicated he supports SB 426. The DOH manages the Montana Wastewater Treatment Revolving Loan Program with a combination of Federal and State funds. State funds come through borrowing through the issuance of general obligation bonds. The DOH uses the revolving fund as security to back up their loans and they feel it is very important that SB 426 pass to maintain that security. Mr. Anderson presented Exhibit No. 12 to these minutes.

Erling Tufte, Director of Public Works for the City of Great Falls, presented Exhibit No. 6 to these minutes. He said SIDs are an important part of how Great Falls finances many local government improvements. The city has been very responsible in dealing with those SIDs and they strongly support SB 426.

Exhibit No. 7 is testimony from Richard A. Nisbet, Director of Public Works, City of Helena, in support of SB 426.

Exhibit No. 8 is written testimony from the City of Kalispell in support of SB 426.

Exhibit No. 15 to these minutes is a written testimony by Richard T. Kerin, P.E., in support of SB 426.

Opponents' Testimony:

Mona Nutting, County Commissioner of Carbon County, spoke in opposition to SB 426. Ms. Nutting said the revolving fund was intended as a loan to solve temporary cash-flow problems during the time between when assessments are due and the time they are actually received. It was not a guarantee of partial payments to the bondholders. These same bondholders make voluntary investments after receiving a prospectus which should have disclosed the risk associated with the investment. Is it the underwriter's responsibility, or the legal counsel's responsibility, to make investors aware of the risk involved. Ms. Nutting said the risk lies with the bondholders and not the county, and that is why the interest rate is high. In the case of Carbon County, the net effective interest rate for the issue was 12.769%. Factoring in the tax exempt status of the bonds, it equates to a 20% yield, depending on the individual's tax situation.

Ms. Nutting said that in a cover letter for the bill draft, it was stated that it is unclear what insolvent was. This was pertaining to the Carbon County case and Judge Honzel's decision. Carbon County knows what insolvency is. As of January 26, 1993, the delinquency rate on the assessments for the Red Lodge Country Club Estates was 83%. The outstanding principal and interest on this project is now $3.8 million. The beginning obligation was

$3.2 million. During the time she was Commission Chairman, one of the underwriters told her that Carbon County would be responsible for levying monies to the revolving fund forever, or they would never be able to sell another bond in Carbon County. This leaves Carbon County and the innocent taxpayers as victims. She urged the defeat of SB 426.

Tony Kendall, Carbon County Attorney, spoke in opposition to SB 426. He noticed the Fiscal Note states there is no fiscal impact of SB 426 and there is no affect on counties or other local revenues for expenditures. He disagreed with that because passage of SB 426 wold have a negative impact on Carbon County of approximately $2.25 million, if it is passed. Exempting the Carbon County lawsuit from the effect of the bill isn't going to help the taxpayers in the other 55 counties. Mr. Kendall said it is inconceivable that Carbon County is unique in its position with respect to defaulted RSIDs. He thinks it is important that this Committee's members hear from their constituents on this issue, and that the bill not be rushed through. Judge Honzel studied briefs for 8 months before deciding the issues. Mr. Kendall doesn't think this legislation will cure the constitutional defects, or at least doesn't answer the constitutional questions in the current law, and quite possibly adds another defect by changing current law instead of clarifying it as the proponents purport it to do. He said it changes the law to the position of Dorsey Whitney as it was throughout the years. He doesn't think the taxpayers should carry the burden of the $71 million exposure of Dorsey Whitney's fiscal impact. Mr. Kendall said SB 426 will turn a limited special obligation into a general obligation of the county. No one in the county gets to vote on it.

Rep. Alvin Ellis, Jr., House District #84, spoke in opposition to SB 426 as a representative of Carbon County. He said he is not a bond counsel, but he thinks SIDs will continue to be sold whether or not SB 426 passes. Interest rates will continue to depend on the underlying value of the property, and this is what Judge Honzel said the law is.

Ward Swanser, an attorney with the Moulton, Bellingham, Longo, & Mather firm in Billings, spoke in opposition to SB 426. Mr. Swanser said his firm was counsel for Carbon County in the case that Judge Honzel decided. Mr. Swanser submitted Exhibit No. 10 to these minutes, which includes a copy of Judge Honzel's court decision. Mr. Swanser said SB 426 is very misleading; it is not a bill to clarify, it is a bill to change the character of the way improvements are financed. Revolving funds now are used to make up a shortfall for the prompt payment of a loan which is to be secured from the individual county to the revolving fund. It was a short-term loan; it was not a general obligation. This legislation changes the revolving fund from a special obligation, which the property is to pay, to a limited general obligation where the taxpayers are put on the hook for up to 5%. Mr. Swanser compared this 5% amount to a $3 million lottery, and this

amount over 20 years at 5% is similar to what would have been lost in a lottery. This bill would put the county taxpayers on the line for those increased costs up to the full principal of the amount of the improvements. Mr. Swanser said the issue is no longer a revolving fund, it becomes a guarantee fund; it is no longer a special obligation, it is a limited general obligation; it is no longer a loan, it is a pledge. Judge Honzel ruled that if the loan is no longer a loan, if there is no security for the loan to the revolving fund, the county may not have to continue to loan money to it. Carbon County loaned $401,000 from its revolving fund to the district fund. Judge Honzel interpreted the law to mean that a loan was a loan, it had to be secured, and it is not a general obligation of the taxpayers.

Mr. Swanser said that if improvements do not equal or are not up to the value of the property, the district should not be created in the first place. Judge Honzel's ruling said a good project which can stand on its own can continue to have a revolving fund, and it can continue to make loans; it is only when there is no hope of ever being repaid for those loans and it becomes an assessment and a special obligation, or a mortgage on all the other tax-payers' property in the county or city, that a halt can be called.

Mr. Swanser distributed and explained Exhibit No. 11 to these minutes. He said the people who are pushing SB 426 are the same bonding counsel people and financial people who are involved in the Carbon County case, and this bill is an attempt to reverse the law that they have been interpreting for some time. Judge Honzel didn't make new law, he just interpreted the existing law.

Mr. Swanser said there are alternatives to addressing this problem, and pointed out four suggestions in his letter of March 16th, in Exhibit No. 10. They are: (1) Capitalizing an amount for a revolving fund from the bond proceeds; (2) Creation of a deficiency fund; (3) Creation of a guarantee fund; (4) Creation of a special fund. Some of these alternatives have been successfully used in other states.

Mr. Swanser predicted that if SB 426 is passed, there will not be a clean bond opinion given. There is still an opinion as to whether or not county residents can be obligated for the 5% revolving fund deficit when they never had an opportunity to vote on the issue, and will be given no benefit from the assessment. He believes there are constitutional prohibitions to doing that, and he feels that SB 426 is putting a limited obligation into a general obligation.

In Carbon County, the bonds were put up for sale. No one bid on them because it was a raw land development where there was some question as to whether the land would be able to pay for the improvements. At no point does the SID law say that anyone else will pay for those improvements, other than the land. Mr. Swanser said the law allows a revolving fund to loan money, but

in so doing, the revolving fund takes a lien on the land, and the land will pay off the improvements. After not being able to sell the bonds, the underwriters said they would bid on the bonds but would need additional security by having the joint venture involved in the project guarantee the first eight years of the bonds. Dorsey Whitney, however, struck the 8-year guarantee without telling Carbon County officials.

Mr. Swanser said if it is a bad project, don't re-write the law and impose a burden upon the innocent taxpayers. He said the lesson to be learned is to impose limitations so there will be no bad projects. There are some laws already in effect which say that an RSID will not be created in some jurisdictions if improve-ments amount to more than 25% of the value of the land. He said SB 426 will encourage bad projects, and will tell the taxpayers that they will stand a burden up to 5% of improvements for which they will have no voice.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Halligan asked Mae Nan Ellingson if there is a resolution adopted, or a public statement made, in which the city or county promises the bonds will be paid. Ms. Ellingson said that the promise is made at the time the bonds are issued. The document is called a Bond Resolution and is the document that authorizes the issuance of bonds and makes the recitation as to what the issuer agrees to do with respect to the creation of the SID. In the issues she has worked on that have been secured by a revolving fund, the covenant of the county, or city, generally is contained in that document, and is represented in the offering circular. It is the city or county's obligation to disclose information to the potential buyer.

Senator Towe asked Ms. Ellingson to respond to the comments made by Mr. Swanser that the revolving fund was originally intended to be a loan to make up the difference for the three years it is going to take Carbon County to sell the property and recoup that amount. Ms. Ellingson said she has researched the SID laws and the three Supreme Court decisions which indicate that if a county has created a special improvement district and secured it by the revolving fund, they must make the loan. There is nothing in the statutes that says they must make the loan if they are assured of getting repaid. She thinks the Legislature can change the law and say that if, at any time, it is determined that the loan would not be a secure loan because of the amount of assessments outstanding against it, the loan would not have to be made. She said her firm, as well as other firms giving opinions on SID bonds, has never felt it was an obligation that would be evaluated by every successive city or county in terms or whether the loan is secure or not.

Senator Towe asked Ms. Ellingson to respond to the opinion by Judge Honzel that the problem is that notice is not being given to the other property holders in the county that their property may be subject to this assessment. Ms. Ellingson said a false statement is being made at this hearing which says it is taxation without representation for the taxpayers who are subject to a tax for the revolving fund. There is nothing in our Constitution which says that for a tax to be valid, the people have to vote on it. She also said the property in the city or county that is subject to taxation for the revolving fund is not subject to an assessment, it is subject to a general tax levy.

Senator Towe asked Mr. Swanser to respond to the concerns that without the revolving fund, it is going to be difficult, if not impossible, to sell needed SID and RSID project bonds. Mr. Swanser said that in 1985, bond underwriters and bond counsel said they will give an option of having a revolving fund, or not having a revolving fund. He said the problem is that now most districts are getting stampeded into using a revolving fund. He said the revolving fund, itself, is a loan, and as long as it can be a loan and has a chance of being repaid on a good district, it will work great. He thinks a county could lose money on a revolving fund because the 5% must be put into the loan, and there is a lien on that property. In Carbon County, nobody bought the lots, and the bonds should never have been sold. People should not be misled by telling them the 5% will be paid by the county. Under a scenario where the improvements are 25% of the land value, this will not be an issue. The Carbon County Commissioners were told that there were guarantees and additional security had been given, before they approved the project. When that guarantee was taken out, without advising the Commissioners, the burden was then shifted from the joint venture to the county taxpayers. On the premise that the land should pay for the improvements, and the developers are being benefitted, the owners should be the ones paying for the improvements, not the taxpayers, according to Mr. Swanser. The 5% assessment in Carbon County was 10% of their total County budget.

In response to a question by Senator Doherty if anyone had not used the firm of Dorsey Whitney, John DeVore, Missoula County, said they have used other bond counsel in the past. In their experience, they found Dorsey Whitney to be the most knowledgeable about Montana law and the most cost-effective firm to work with.

Senator Doherty asked Ms. Ellingson to respond to the opponent's charge that she is not clarifying that the limited obligation is being changed to a general obligation. Ms. Ellingson said it has been the understanding of this state and the financial community in the issuance of bonds that the obligation to make the loan from the revolving fund had always been there; this is not new with SB 426. Her understanding of a general obligation is a bond for which the full faith and credit and unlimited taxing power of a city, county or state is pledged.

She said SID bonds have never been a general obligation, nor does she think the changes proposed in SB 426 creates a general obligation. If they were a general obligation, then the minute there is a default, the city or county would be obligated to levy whatever amount in tax is necessary to pay the principal amount coming due. The Legislature, when they created the revolving fund, set up a more limited obligation; the maximum amount that could be levied in a tax each year is an amount that would produce 5%; it couldn't cause the balance in the revolving fund to exceed 5% of the outstanding principal amount of existing SID bonds. The 5% may or may not generate sufficient enough money to pay the principal and interest on bonds when due. Dorsey Whitney is not trying to make them a general obligation.

Senator Doherty asked, if the Honzel decision stands, who will be most upset, who will the bond holders look to for payment, and if SB 426 passes, who will be protected by it. Ms. Ellingson said her Exhibit No. 3 includes a copy of an opinion Dorsey Whitney could give going forward. If SB 426 does not pass, she thinks the people who stand to risk the most are the bond holders. Dorsey Whitney would advise the cities and counties for whom they have acted as bond counsel that they are still obligated to honor the covenants that they made with the bond holders; if they do not do so, they will be faced with litigation.

Senator Doherty asked if it is Ms. Ellingson's intent that SB 426 would in any way affect the Carbon County case, assuming SB 426 passes with the amendment as proposed. She replied that it is not her intent.

Senator Gage asked Mr. Swanser if it would change his support, or non-support, of SB 426 if the Committee would put all of the new language on page 3 under Subsection (3) on Page 6. Mr. Swanser said it would not change his opposition to SB 426, but there is one plus for cities and counties in the bill in that a time limitation is being placed on the length of the bonds. SB 426 does create up to a 5% general obligation on the cities and counties, which he thinks is misleading and he objects to primarily. People are not able to vote on this and they are asked to pay for a benefit they did not receive.

Senator Van Valkenburg said he takes exception to the comments that the people in general receive no benefit from SIDs. He said most all of these SIDs deal with improvements that are related to water, solid-waste, curb and gutter, or storm sewers. The Senator asked Mr. DeVore what happens in a county in terms of the impact on everyone else in the community, when improvement districts are not authorized. Mr. DeVore responded that there is a general benefit to all of the community when improvements are made.

In response to Senator Van Valkenburg's questions about the characterization of SB 426 as a clarification of the law, Mr. Swanser said he sees the bill as a significant fundamental change as far as who pays the 5% revolving fund.

Senator Grosfield asked Gordon Morris, Director of Montana Association of Counties (MACO) if this is an urban/rural issue. Mr. Morris said there is a significant financial impact on local governments, but it is definitely not an urban/rural issue in that both are in the business of issuing SID/RSID bonds.

Senator Brown asked Ms. Ellingson if it would be acceptable to her if SB 426 is prospective and just applied to the issuance of bonds in the future, instead of re-doing the law as it applies to bonds that have been issued in the past. Ms. Ellingson said she does not believe the law has changed resulting in these bonds being general obligation bonds. She thinks it is within the Legislature's purview to make these bonds subject to voter approval. She is concerned more about the Legislature not trying to clarify for the benefit of the holders of the outstanding bonds who believe they bought the bonds both on the representations of the issuers and the promises of the issuers.

Closing by Sponsor:

Senator Kennedy said SB 426 will assure that most SID projects scheduled over the next two years can proceed. If counties and cities wish to make major changes in the way SIDs are financed, they should work with bond counsel and underwriters over the interim and bring a proposal back in 1995. Local governments can decide if they do or do not want to secure their SID bonds with a revolving fund. Senator Kennedy said there are problems with SIDs and RSIDs and he is open to suggestions if this Committee can find a better way to solve the problems.

HEARING ON SB 427

Opening Statement by Sponsor:

Senator Mike Halligan, Senate District 34, waived his opening statement on SB 427, which is a bill to clarify the mill limit for SID revolving funds.

Proponents' Testimony:

Chuck Stearns, Finance/City Clerk for the City of Missoula, appeared in favor of SB 427 and presented his written testimony as Exhibit No. 13 to these minutes.

Miral Gamradt, Finance Director for the City of Bozeman, appeared in favor of SB 427 and presented his written testimony as Exhibit No. 14 to these minutes.

Alec Hansen, Montana League of Cities and Towns, appeared in favor of SB 427. He said I-105 and SB 71 allow no increase in property taxes in Classes three, four, six, nine, twelve, and fourteen. Since there are no minutes of the conference committee meetings on SB 71, it is impossible to decide what the intent of the Legislature was in 1987. Mr. Hansen said the standard test the League has applied in advising its members on how to operate under I-105 is that the combination of mills and value cannot produce more revenue than it did in the base year of 1987, with a few exceptions. Now, it has been questioned if this is a valid test. One issue in an Attorney General Opinion is when the exemption was created for certain categories of taxes and assessments, were those then excluded from the base for purposes of calculating what the limit is. There is no clear answer because of the lack of conference committee minutes. Mr. Hansen said if SB 427 is passed, I-105 will be fully intact; there is no intent to raise taxes. The League will still apply the standard test in advising their members how to operate. SB 427 will clarify the unanswered questions regarding the mill levies for SID revolving funds.

Joe Menicucci, City of Belgrade, stood in support of SB 427.

Opponents' Testimony:

Tom Hopgood, representing the Montana Association of Realtors, spoke in opposition to SB 427. Mr. Hopgood said I-105 was clarified in 1987, and provided specific exemptions to SIDs, and for revolving funds, to support any categories including SIDs. If a county did include SIDs and revolving funds, which Mr. Hopgood said it shouldn't have, SB 427 will allow it to continue that levy even though the SIDs have been paid off and bonds have been decreased. Mr. Hopgood feels SB 427 will artificially raise the ceiling as opposed under I-105.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Alec Hansen if SB 427 is an infringement on I-105. Mr. Hansen said he does not think so. He said it is a good faith effort to clarify; there is no intent to infringe, impinge, outrun, or circumvent I-105. Mr. Hansen said opinions have been issued by appropriate authorities telling the League it is corrently informing their members on the standard test. He said SB 427 will clarify the law.

Senator Eck said Attorney General (AG) Opinions have been requested from the former AG and the present AG, and they have not been willing to rule on this issue. Mr. Hansen said this is correct, and it is extremely difficult to decide this issue because it comes down to legislative intent. He has looked at

all of the minutes from the 1987 Legislative Session, and he cannot find anything that decides the issue conclusively one way or the other.

Senator Van Valkenburg said Senator Gage sponsored SB 71 and asked his opinion in this matter. Senator Gage replied that he is kind of fuzzy on the conference committee meetings However, where there is no longer a need for an apportionment of a flat tax on coal and the local government severance tax, taxing jurisdictions have been allowed to use those funds in other areas. This appears to him to be the same kind of issue. In consistency, he has to agree with SB 427.

Closing by Sponsor:

Senator Halligan offered no further closing remarks.

EXECUTIVE ACTION ON HJR 3

DISCUSSION:

Senator Van Valkenburg asked the Committee to reconsider its action on HJR 3, the Revenue Estimating Resolution, in passing it out of Committee. He believes it is too early in the Session to send HJR 3 out onto the floor.

MOTION/VOTE:

Senator Van Valkenburg moved that the Committee reconsider its action in adopting a Do Pass vote on HJR 3, and asked to keep the bill in Committee for awhile. The motion PASSED UNANIMOUSLY on oral vote.

ADJOURNMENT

Adjournment:

The meeting adjourned at 10:03 a.m.

MIKE HALLIGAN, Chair

BONNIE STARK, Secretary

MH/bjs

ROLL CALL

SENATE COMMITTEE TAXATION DATE 3-17-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	✓		
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty	✓		
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg	✓		
Sen. Yellowtail	✓		

FC8

Attach to each day's minutes

SENATE TAXATION
EXHIBIT NO. 1
DATE 3-17-93
BILL NO. HB413

PROPOSED AMENDMENT
HOUSE BILL 413
(Third Reading)

1. Page 5, line 23 through page 6, line 2.
Following: "in" on line 23
Strike: remainder of line 23 through "~~fund.~~" on page 6, line 2.
Insert: "an account in the state special revenue fund to the credit of the department."

Amendments to Senate Bill No. 426
First Reading Copy

SENATE TAXATION
EXHIBIT NO. 2
DATE 3-17-93
BILL NO. SB 426

Requested by Senator Kennedy
For the Committee on Taxation

Prepared by Jeff Martin
March 16, 1993

1. Page 11, line 13.
Strike: "[This act]"
Insert: "Except for rural special improvement district and special improvement district bonds and warrants that are the subject of judicial proceedings that were begun before January 1, 1993, [this act]"

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MEMORANDUM

SENATE TAXATION
EXHIBIT NO. 3
DATE 3-17-93
BILL NO. SB 426

TO: Senate Taxation Committee

FROM: Mae Nan Ellingson
Dorsey & Whitney

DATE: March 17, 1993

RE: Senate Bill No. 426

CC: Senate Local Government Committee

The firm of Dorsey & Whitney has been rendering opinions on Montana rural and special improvement district bonds in Montana since the late 1950's. My personal experience with Montana special improvement district bonds covers nearly 16 years, derived from my six years, from 1976 to 1983, as deputy city attorney for the City of Missoula, and since 1983, in acting as bond counsel for various cities and counties in the issuance of special improvement district bonds. I note that our firm acted as bond counsel on the rural special improvement district bonds issued by Carbon County in 1984, which will undoubtedly be referred to in this Committee hearing. Before addressing the specifics of Senate Bill No. 426 (SB 426), which Senator Kennedy asked me to do, it may be helpful to give you an overview of special improvement district financing in Montana.

Since 1913, Montana counties, cities and towns (municipalities) have been authorized to create special improvement districts and issue special assessment bonds for the purpose of financing the costs of certain public improvements within such districts. The laws governing rural special improvement districts created by counties and special improvement districts created by counties are essentially the same.

Under Montana law, a municipality may finance the cost of local improvements, such as street and utility improvements, and assess the costs thereof against benefitted property only by the creation of special improvement districts. Such districts are created following adoption by the governing body of the municipality of a resolution of intention that specifies the boundaries of the district, the general character of the improvements, an approximate estimate of the cost thereof and, under current law, the method or methods by which the cost of the improvements will be assessed against property in the district. Notice of the passage of the resolution of intention must be published in a newspaper published in the municipality and must be mailed to the owners of real property within the proposed district. The governing body of the municipality is empowered to include lots not fronting on the proposed improvements within the district if it finds that such lots or improvements are benefitted thereby.

Within 15 days after the date of publication of the notice of passage of the resolution of intention, owners of property within the district to be assessed with the cost of the improvements may make written protests against the improvements or the creation of the district. Unless the owners of more than 50% of the assessable property file protests, the governing body of the municipality, after a public hearing, may adopt a resolution creating the district and ordering the improvements. In the case of city sewer improvements, the council can override the protest of affected property owners, to the extent the protest does not exceed 75% of the assessable property. In case of rural improvement districts created for sewerage improvements protest, the county commissioners can override a protest by a unanimous vote. Following the creation of the district, the governing body is authorized to advertise for construction bids and let construction contracts, so long as the cost of the improvements does not exceed the estimate of costs contained in the resolution of intention.

Following advertisements for competitive bids, the municipality is also authorized to issue its special improvement district bonds the proceeds of which are used to pay the costs of the improvements. Initially, special improvement district bonds had only a single, final stated maturity, but were subject to mandatory redemption at any time if after paying interest due on the bonds, there remained amounts on deposit in the district fund. Special improvement district bonds issued since 1985 must mature annually, either as serial bonds or amortization bonds. The bonds are still subject to mandatory redemption either from unexpended proceeds thereof or from the prepayments of special assessments levied in the district. Special improvement district bonds are drawn on the fund of a special

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improvement district. Two sources are pledged to the district fund to pay the bonds: special assessments levied in the district and since 1929, as later discussed, amounts loaned to the district fund from the revolving fund.

To secure the bonds and thus pay the cost of the improvements undertaken in or for the benefit of a district, the municipality is obligated to levy assessments in the principal amount of the bonds against assessable property in the district. "The theory upon which a municipality may levy assessments for special improvements is that the property charged receives a corresponding physical, material, and substantial benefit from the improvement; that the property assessed will be enhanced to the extent of the burdens imposed." State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 270 P. 638, 639 (1928) (citations omitted). The assessments are payable over a term, not to exceed 20 years, corresponding to the final maturity of the bonds, and are payable semiannually in equal principal amounts, with interest on the unpaid installments of the assessment equal to the average annual rate of interest on the outstanding bonds. (Changes made by the Legislature in 1987 authorize the levy of assessments in amortized amounts and bearing interest at a rate up to 1/2% above the average rate of interest on the outstanding bonds.)

Special assessments do not represent a personal obligation of the property owner, but instead "constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest." Section 7-12-4190. The lien of a special assessment may be enforced only by the sale of the property at a tax sale conducted pursuant to Title 15, Chapter 17. Montana law grants the delinquent taxpayer or other interested parties the right to redeem property sold at a tax sale.

Since 1929, municipalities creating special improvement districts have been authorized to create and maintain special improvement district revolving funds to secure the prompt payment of the principal and interest on special improvement district bonds. The provisions relating to the revolving fund are found at Sections 7-12-2181 through 7-12-2186 for counties and Sections 7-12-4221 through 7-12-4229 for cities and towns (the Revolving Fund Law), a copy of which is attached to this testimony for your review.

Prior to 1929, special assessments were the only source of payment for special improvement district bonds. Up to that time, Montana law provided that a tax deed conveyed absolute title free from all encumbrances, except the lien for taxes which

may attach subsequent to the sale. In State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 270 P. 638 (1928), the Montana Supreme Court construed this provision of Montana law to hold that a tax deed extinguished the lien of all special assessments levied against the property, not only those installments payable before issuance of the deed but subsequent installments as well. The discharge of future installments upon issuance of a tax deed virtually assured that special improvement district bonds secured by such assessments would not be paid in full.

In construing the Revolving Fund Law, the Montana Supreme Court noted in 1929:

> "As the cost of an improvement is ordinarily apportioned to the several lots according to area or front footage on the improvement, it will be seen that, by reason of delinquency of property owners in paying assessments, a certain percentage of the principal and interest on special improvement bonds may never be paid. In order to meet this situation, the Legislature in 1929 enacted the [Revolving Fund law]." Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 136 (1929). At the time, "the value of [special improvement] district bonds and warrants was problematical, and their salability greatly impaired, and the public credit and public good necessitated some action to remedy the defects in the existing law." 284 P. at 139.

The Revolving Fund law required that a municipality create a special improvement district revolving fund (the Revolving Fund) for any special improvement district bonds it would thereafter issue. The purpose of the Revolving Fund is to secure the prompt payment of special improvement district bonds and interest thereon when due. Section 7-12-2181 and Section 7-12-4221. Whenever there is insufficient money in a district fund to pay any special improvement district bond or interest thereon when due, an amount sufficient to make up the deficiency is to be loaned from the Revolving Fund to the district fund, to the extent that moneys are available. Section 7-12-2183 and Section 7-12-4223. The Revolving Fund originally secured all special improvement district bonds or warrants of the municipality issued after the effective date of the Revolving Fund law. As will be discussed later, the Legislature in 1983 authorized a municipality to issue special improvement district bonds or warrants not secured by the Revolving Fund. There are three sources of funds for the Revolving Fund: (1) since 1981, a deposit of up to five percent of the proceeds of special improvement district bonds; (2) a loan from the general fund of the City of such amount as may be deemed

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necessary; and (3) a levy of a tax on all taxable property in the municipality as shall be necessary to meet the financial requirements of the Revolving Fund. Section 7-12-2182 and Section 7-12-4222. If a tax is levied, the tax may not be an amount that would increase above the balance in the Revolving Fund five percent of the then outstanding special improvement district bonds and warrants secured thereby. Whenever the Revolving Fund loans money to a district fund, it has a lien therefor on all unpaid assessments and installments of assessments (whether delinquent or not) thereafter deposited in the district fund, to the extent such assessments are not required to pay debt service on the bonds. Sections 7-12-2183(2), 7-12-2185, 7-12-4222(2) and 7-12-4224. Whenever there is excess money in the Revolving Fund, it may be transferred to the general fund.

The Stanley v. Jeffries case involved two actions, one challenging the constitutionality of the Revolving Fund law in general as, among other things, authorizing a loan or donation of public funds for the benefit of holders of bonds secured thereby and authorizing the levy of a tax for a private purpose, and the other challenging the pledge of the Revolving Fund to special improvement district bonds that were issued before the enactment of the Revolving Fund law. With respect to the first action, the court stated:

> Here, it is true, the holders of bonds and warrants of any city in this state, issued for the payment of special improvements made under the special improvement district law will profit by the provisions of [the Revolving Fund law], as compliance by the city with its provisions will, in part at least, do away with losses by reason of the failure of a certain per cent of the property owners to pay the special assessments, and consequent loss of liens on property, as above pointed out, for which, without this act, there was no method of recoupment. But the work to be done within such improvement districts as are hereafter created in cities is essentially public work, and the purpose of providing for such work necessarily a public purpose.
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> . . . .
>
> [T]he laying out and improvement of streets, alleys, sewers, and the like is essentially a public purpose benefiting the entire community, although the work is done in but a portion of the city, and, in the absence of any legislative restriction, each portion of the city might be thus improved at the general public expense, and no taxpayer

> could be heard to complain thereof. In other words, in order to erect any public improvement by the creation of special improvement districts, both general benefits to the municipality and special benefits to particular property must be conferred--the special benefit to adjacent property is but incidental to the general benefit to the city; it could not otherwise lawfully be created.
>
> When, therefore, the Legislature provided that, as to special improvement districts created in the future, a fund shall be created to insure the prompt payment of bonds and warrants issued in payment of such improvements, it but modified the special improvement district law to impose upon the general public, within the municipality, a conditional obligation to pay a small portion of the cost of erecting the public improvement, whereas it might have, lawfully, imposed a much greater burden upon the municipality.

Id. at 138-139 (emphasis added, citation deleted). It is evident that the Court, in upholding the constitutionality of the Revolving Fund law, contemplated that losses resulting from delinquent assessments were transferred in part from holders of special improvement district bonds to the issuing municipality and the Revolving Fund.

In that case, the Court held that the Revolving Fund could not be used to secure bonds issued before the date of the Revolving Fund law, because such application, even if approved by the voters of the municipality, would authorize the levy of a tax for a private purpose in that it unduly benefitted the bondholders by giving them additional security they did not bargain for.

The significance of this case is the recognition by the Court over 60 years ago that the Legislature can authorize a municipality to levy a tax on all property owners within the jurisdiction to enhance the marketability of special improvement district bonds.

The only other Montana Supreme Court case that addresses the obligation of the Revolving Fund with respect to special improvement district bonds is Hansen v. City of Havre, 112 Mont. 207, 114 P.2d 1053 (1941), in which the Montana Supreme Court held that special improvement district bonds secured by the Revolving Fund do not constitute indebtedness of the municipality within the meaning of the Montana Constitution:

> The special improvement district revolving fund . . . is made up of funds transferred from the general fund of the city or by the levy and collection of a tax on all the taxable property in the city. However, the moneys in the revolving fund are not chargeable with the payment of the bonds, but moneys used for that purpose from the revolving fund are merely loaned by the revolving fund to the district fund. And when such a loan is made the revolving fund has a lien as security for the loan . . . .
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> . . . .
>
> . . . Hence, the possibility that part of the bonds may have to be paid with moneys obtained from the revolving fund which in turn is created by a tax levy on the property of the city does not create a city debt but is merely an arrangement whereby the city, through the revolving fund, loans money to the district, and for which it holds security in the form of a lien.

Id. at 1057. The Court also held in that case that a municipality must loan money from the Revolving Fund to a district fund even though the provision in question (now Section 7-12-4223) provides that such money "may," by order of the city council, be loaned:

> The Legislature has made it mandatory for the city council to levy taxes for the purpose of raising sufficient money in the revolving fund to meet the financial requirements of such fund, thereby recognizing that the revolving fund must meet certain requirements. In order to carry out the obvious legislative plan with respect to the revolving fund, we hold that it is mandatory that the city council use that fund for the purpose intended, and that it must make orders directing loans from the revolving fund to the district funds when funds are needed to make up any deficiency. This being so, the contract to do so does not bind successive officers to perform a discretionary act. The law makes the act mandatory irrespective of the contract.

Id. at 1059.

Special improvement district bonds have been issued, sold and paid on the basis of the Revolving Fund obligation for more than 60 years in reliance upon the clear language of the statutes and the decisions of the Montana Supreme Court. We do not have records that would reveal the total amount of such bonds that have been issued over the last 60 years or even the total amount that are currently outstanding; but it is a significant sum. For the five cities and four counties shown on Exhibit A alone, there is approximately $71 million of outstanding bonds.

In the mid-to-late 1970's and early 1980's, special improvement districts were widely used to finance the required public improvements for newly platted subdivisions. Montana law required cities and counties to adopt subdivision regulations by July 1, 1974, which had to address the improvement of roads, provision of adequate water, drainage and sanitary facilities . . . ." As a condition to final approval of a subdivision plat, a city or county had to make sure the public improvements would be constructed. Special improvement districts provided a mechanism for doing so, since the city or county could control the creation of the district, the issuance of the bonds and the construction of the improvements. When lots in some of the subdivisions throughout the State did not sell as anticipated and developers did not pay their assessments, taxes had to be levied in several jurisdictions to fund the Revolving Fund in order to make Revolving Fund loans to the various district funds. I personally recall some debate and discussions in various legislative sessions throughout the late 1970's and early 1980's as to the fairness or propriety of the Revolving Fund mechanism, but no changes were made until 1983.

In 1983, the Legislature amended the statutes to provide that a county "<u>may</u> . . . create, establish and maintain" such a fund. The Legislature then added a final sentence saying: "Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged." Sections 7-12-2181 and 7-14-4221.

The purpose for making the Revolving Fund optional instead of mandatory was explained in the legislative history of the 1983 amendment which illustrates that the Legislature has always seen the Revolving Fund as providing additional security for the bondholders. Consider the comments made by the amendment's sponsor:

> Rep. Walter Sales, District 79, sponsor, opened by saying we have delinquent RID's and SID's at this time. Our present laws that establish

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bonds for SID's and RID's have a revolving fund requirement that the whole tax paying area is actually responsible for the payment of those bonds. When you get into a period like we're in now when payments are not being made, then the county has to levy a property tax on the whole district to make those bond payments. This is an alternate type of bond. It would limit the obligation to the district where the improvement is being made. There would be no general taxing backup of these bonds. It would not effect the existing law but it would create a new section for a new type of bond.

* * * *

Rep. Walter Sales, Dist. #79, said this gives an alternative method of financing RIDs and SIDs for cities, towns and counties. It doesn't interfere with the present manner. It also sets up a district and issues bonds that are not secured by the revolving fund. The general taxpayers are not liable for any default. The whole obligation would remain with the property in the district itself.

The comments of another proponent are described this way in the legislative history:

Bill Verwolf, city of Helena, said this would provide cities that don't wish to have their general taxing authority back the bonds, to assist developers. They would not be backed by the taxing authority of the city. Some cities don't want their taxing authority tied to the bonds.

Thus, in 1983 the Legislature gave cities and counties an option of issuing bonds "that are not secured by the revolving fund" so that taxpayers would not be "liable for any default." These minutes clearly reflect that it was understood that if the Revolving Fund was pledged, the issuer was obligated to levy either a county-wide or city-wide tax, subject to the 5% limitation to fund the Revolving Fund.

We are not aware of any special improvement district bonds being issued without Revolving Fund backing. I believe there are some underwriters who will address the issue of whether such bonds would be marketable and, if so, at what rates of interest.

On February 5, 1993, Judge Honzel of the First Judicial District issued an opinion which raises question as to the enforceability of the Revolving Fund covenants (the "Carbon County case"). In light of that opinion, we have delivered to various underwriters and cities and counties, a form of bond counsel opinion that we believe could give in light of the decision and certain facts that would have to be disclosed to potential purchasers of special improvement district bonds as to the security for the bonds and, in particular, the Revolving Fund. A copy of the form of that opinion, as well as copies of an opinion we gave prior to the Carbon County case, as well as an earlier opinion given by another firm are attached for purposes of comparison.

It has been represented to us by the underwriters that special improvement district bonds are probably not marketable, at least to the public, with such an opinion or if they are marketable, they would be so only at a rate of interest substantially in excess of the rates that special improvement bonds have typically enjoyed. Presumably the underwriters will address that in their comments to the Committee. Now to the provisions of Senate Bill No. 426.

Since we were aware, at the time of the Carbon County case, that several cities and counties had created special improvement districts and they desired to issue bonds and begin construction of projects this season, we prepared draft legislation which became Senate Bill No. 426 (the Bill). The sole purpose for the Bill is to address the uncertainties raised by the Carbon County case, both with respect to outstanding bonds and bonds proposed to be issued. In the Memorandum and Order issued in the Carbon County case, the district court stated that in the circumstances of that case Carbon County should not be required to make any further loans from its Revolving Fund to a district fund on which were drawn rural special improvement district bonds. Because the Memorandum of the court does not specify the bases for this holding, the scope of the agreements of cities, towns and counties to make loans from their Revolving Funds to district funds on which bonds have been or are to be issued has been brought into question.

The Bill clarifies three points brought into question by the decision: first, the obligation to make loans to a district fund is not dependent on the adequacy of the security for the loan (i.e., the adequacy of the unpaid special assessments in the district to repay the Revolving Fund); second, the obligation to make the loan is not subject to the restrictions or limitations of other laws; and, third, the obligation to make loans is not of unlimited duration. The obligation to make loans terminates upon the later of the final stated maturity date of the bonds or the date on which all

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special assessments levied in the district have either been paid or deemed discharged, as defined in the Bill.

The Bill does not affect the obligations of a city, town or county to fund the Revolving Fund, but addresses only the obligation to make a loan from the Revolving Fund to a district fund. No amendments are proposed in Section 7-12-2182 in the rural special improvement district law or in Section 7-12-4222 in the special improvement district law, each of which limits the obligations of counties and cities or towns, respectively, to fund the Revolving Fund by either a tax levy or loan from the general fund to an amount that does not cause the balance in the Revolving Fund to exceed five percent of the outstanding principal amount of the bonds and warrants secured thereby. Consequently, the Bill does not make rural special improvement district bonds or special improvement district bonds general obligations of the issuer. The Bill addresses only the circumstances under which funds on deposit in the Revolving Fund are to be loaned to a district fund.

A brief summary of each section of the Bill is set forth below:

Section 1. *Amendment of Section 7-12-2181.*

Section 1 contains a conforming amendment to an amendment made by Section 2 which would limit the duration of the obligation to make a loan to the district fund to a period less than payment of all bonds drawn thereon. The loan is to be made notwithstanding the adequacy of the security therefor.

Section 2. *Amendment of Section 7-12-2183.*

Section 2 contains the substance of the amendments. Subsection (2) to be added clarifies existing law to provide that a loan must be made to a district fund, notwithstanding the adequacy of the security therefor. Thus, the market value of the property subject to assessment liens or the likelihood that delinquent or other special assessments in the district will be paid are not factors in determining whether a loan is to be made to a district fund. Indeed, it is the situation where the likelihood of repayment of the loan is lessened that the loan from the Revolving Fund is necessary for the security of bonds drawn on the district fund.

Subsection (3) to be added limits the duration of this obligation, a limit that was not contained previously in the statute. The obligation continues until either all bonds are paid or until the later of the final maturity date of the bonds or the date

on which all special assessments are paid or deemed discharged. Delinquent special assessments are deemed discharged if extinguished by the issuance of a tax deed or, if the county is the recipient of the tax deed, upon the sale or leasing of the property by the county. As a result, if all special assessments have been either been paid or foreclosed by tax sale, the obligation to make a loan will end upon the final stated maturity date of the bonds, which is established by the issuer at the time the bonds are issued.

Subsection (4) to be added makes clear that the limitations contained in other laws, such as Title 7, Chapter 7, Part 21, relating to the authority of counties to issue general obligation bonds, do not apply to the obligation to make a loan to the district fund. This clarification is made only because certain statements in the Memorandum of the Court in the Carbon County case suggest that other limitations might be applicable.

Subsection (1) as amended contains a conforming amendment as to the duration of the obligation under Subsection (3) and otherwise codifies what has been the law of Montana for more than 50 years. In *Hansen v. City of Havre*, 112 Mont. 207, 114 P.2d 1053 (1941), the Court held that "may" as used in the corresponding statutory provision in the special improvement district law must be interpreted to mean "shall." The Court stated: "The Legislature has made it mandatory for the city council to levy taxes for the purpose of raising sufficient money in the Revolving Fund to meet the requirements of the fund, . . . , thereby recognizing that the Revolving Fund must meet certain requirements. In order to carry out the obvious legislative plan with respect to the Revolving Fund, we hold that it is mandatory that the city council use that fund for the purpose intended, and that it must make the orders directing loans from the Revolving Fund to the district funds when funds are needed to make up any deficiency." 114 P.2d at 1059.

Section 3. *Amendment of Section 7-12-2184.*

Section 3 makes clear that adequacy of the lien is not a condition to making the loan. Conforms to amendment in subsection (2).

Section 4. *Amendment of Section 7-12-2185.*

Section 4 contains conforming amendments to the limitation on the duration of the obligation to make loans contained in Section 2.

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Section 5. *Amendment of Section 7-12-4221.*

Section 5 makes the same changes in the special improvement district law that Section 1 makes in the rural special improvement district law.

Section 6. *Amendment of Section 7-12-4223.*

Section 6 makes the same changes in the special improvement district law that Section 2 makes in the rural special improvement district law. The only difference appears in Subsection (3) to recognize the ability of cities and towns under Title 15, Chapter 17, Part 3, to acquire the county's interest in property sold at a tax sale upon payment of delinquent property taxes but not delinquent special assessments.

Section 7. *Amendment of Section 7-12-4224.*

Section 7 makes the same changes in the special improvement district law that Section 3 makes in the rural special improvement district law.

Section 8. *Amendment of Section 7-12-4225.*

Section 8 makes the same changes in the special improvement district law that Section 4 makes in the rural special improvement district law.

Section 9. *Applicability.*

This section, as amended by the amendment proposed by Senator Kennedy, would make SB 426 applicable to all special improvement district bonds secured by the Revolving Fund, except for bonds that are the subject of judicial proceedings that were begun before January 1, 1993, which would have the effect of making it not applicable to Carbon County.

Section 10. *Saving clause.*

The saving clause in the Bill does not work given the purpose of the Bill. The following saving clause should be substituted: "Sections 1 to 11 of [this act] are remedial in nature and do not imply any lack of authority or invalidity of any rural special improvement district bonds, special improvement district bonds or sidewalk, curb and alley approach warrants which are secured by a revolving fund and issued

before the effective date of [this act] or of any covenants entered into by a county or a city or town or county to provide funds for a revolving fund or to make loans therefrom with respect to such bonds or warrants."

Because of the adverse effect of the decision in the Carbon County case on the marketability of outstanding bonds and the ability of issuers to issue bonds, the Bill provides for an immediate effective date.

Since the introduction of Senate Bill 426, we have learned in various conversations and in newspaper articles that there is some opposition to the use of special improvement districts in general and the security for special bonds provided by the Revolving Fund mechanism as currently contemplated by the Montana Code. We are also aware of a number of incorrect statements have been made publicly, regarding Senate Bill 426, in particular, and special improvement district financing, in general, and we would like to respond to a few of those.

It may be that as a policy matter the Legislature should restrict the discretion of municipalities to create special improvement districts encompassing a substantial amount of undeveloped property or to require that, in such circumstances, the owners of such undeveloped property must provide additional security to secure the payment of the special assessments. (We note that both counties and cities have the discretion under existing law to create or not to create special improvement districts and to secure or not to secure special improvement district bonds by the Revolving Fund and to require that developers post additional security to secure payment of the special assessments.) If this policy decision is to be implemented, we respectfully suggest that it be effected by expressly amending the special improvement district law to so provide, not by defeating passage of Senate Bill No. 426 so that the uncertainties generated by the Carbon County case remain.

It has been asserted in the press, and elsewhere, that Senate Bill No. 426 "attempt[s] to deprive every other municipality or county of the rights that the district court found to exist which would allow them to stop making loans when the underlying district became insolvent; and the right to not make loans if the loans exceed the statutory debt limitations of the county; and the right to protect the taxpayers right to not be taxed without voter approval." The decision in the Carbon County case does not, in our opinion, grant any specific "rights" to any issuer; it merely raises doubts about covenants cities and counties have already entered into to secure bonds with the Revolving Fund. Given the ambiguities of the decision, if an issuer determined not to loan funds to a district fund, it may well be involved in

litigation to clarify the limits of the Carbon County decision, assuming that it would have precedential effect.

It has also been asserted in the *Billings Gazette* that the Revolving Fund "was not designed to provide additional security" for special improvement district bonds. The point of adding Revolving Fund provisions to the special improvement district law, as acknowledged by the Montana Supreme Court in Stanley v. Jeffries was to improve the marketability of special improvement district bonds by providing additional security for such bonds. What other purpose could it have?

The Court in the Carbon County case did not hold that a loan from the Revolving Fund to a district fund is not authorized where the security therefor is inadequate, it held that a loan should not be made where the district is "insolvent" (however that may be defined) and the Revolving Fund would be insufficient to cure the default. The rural special improvement district law clearly grants to the Revolving Fund a lien on unpaid assessments in the district when a loan is made to a district fund, but the law itself provides no standards as to when such loan is authorized to be made. (For example, no reference is made to determining, at the time the loan is to be made, that the market value of property in the district exceeds the principal amount of the outstanding assessments). We believe no standards are prescribed because the Legislature intended that no conditions precedent apply to the loan. As indicated earlier, the Montana Supreme Court held in *Hansen v. City of Havre* in 1941, a county or city does not have discretion not to authorize the making of the loan when it has made covenants with the holders of bonds secured by the Revolving Fund. Senate Bill No. 426 codifies this position, again because of the uncertainties raised by the Court Memorandum.

It has been suggested that use of the Revolving Fund results in a violation of the limits on bonded indebtedness that can be incurred both by cities and counties without voter approval. The special improvement district law prescribes a method for issuing special improvement district bonds and limits the obligation of an issuer in two ways: the principal amount of the bonds cannot exceed the principal amount of special assessments to be levied and the obligation to fund the Revolving Fund is limited to an amount that would not cause the balance in the Revolving Fund to exceed five percent of the principal amount of outstanding bonds and warrants secured thereby. We are not aware of a single issuer of special improvement district bonds or any attorney giving an opinion on such bonds that has ever contended that such bonds were subject to indebtedness limitations. There is no constitutional principle or provision involved that would dictate that result, and as earlier

indicated, the Montana Supreme Court has held that the bonds are not subject to the indebtedness limitation. The Legislature could of course so provide, but we do not believe it has done so. Again, if, as a policy matter, additional limits on the discretion of a county or city to create special improvement districts, to issue bonds or to create or pledge its Revolving Fund for the security of bonds are warranted, we would respectfully submit that they be enacted as an amendment to the rural special improvement law.

It has been suggested, again in the *Billings Gazette* and elsewhere, that Senate Bill No. 426 fails to address the "constitutional" issue that there be "no taxation without representation." We have not been able to locate this principle in the federal and or state Constitutions. "No taxation without representation" became the cry of the colonists in 1765 when the British Parliament imposed the Stamp Act. Of course the colonists had no vote in electing members to Parliament. We assume that all Montana citizens are given the opportunity to elect their respective local governing bodies. In any event, we do not believe that the decision in the Carbon County case rests on a finding that the rural special improvement district law is unconstitutional. The Legislature in the special improvement district law determined that special improvement district bonds could be authorized to be issued by a local governing body) without a vote by the electorate (although a public hearing is required to be held before a special improvement district may be created) and a pledge of the Revolving Fund can likewise be accomplished without a vote of electorate. A challenge to the Revolving Fund mechanism, on the grounds that it constitutes unconstitutional taxation without representation, we respectfully submit, is totally without any foundation. This is supported and illustrated not only by the statutory provisions of other states where special assessment bonds can be issued as "general obligation" bonds of the issuer, without a vote, but numerous provisions in Montana law where the Legislature has given local governments authority to levy and impose taxes on their citizens without a vote. Even the Montana Legislature has been known to impose taxes on its citizens without giving them the right to vote on them.

We do not argue the policy question as to the advisability of maintaining special assessment financing as an option for counties and cities. Counties and cities are in a better position, in any event, to evaluate this question. We attempt herein only to point out the legal difficulties that will remain if Senate Bill No. 426 or similar legislation is not enacted.

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We do not believe that the defeat of Senate Bill No. 426 grants "rights" to counties and cities to "walk away" from the covenants they have chosen to enter into, rather it attempts to define workable limits on those covenants to clarify the role of the Revolving Fund as security as we believe it had been generally contemplated before the decision in the Carbon County case, and to preclude additional litigation in the future. We have and will continue to advise the cities and counties for which we have served as bond counsel that they should honor the covenants they have made with bondholders, notwithstanding the decision of Carbon County, and to not do so will invite litigation.

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EXHIBIT A

Name of Municipality	Amount Outstanding
City of Billings	$26,084,250.00
City of Bozeman	$3,673,000.00
City of Great Falls	$5,093,400.00
City of Helena	$11,148,845.00
City of Missoula	$11,289,931.00
Cascade County	$3,355,000.00
Flathead County	$1,058,605.51
Gallatin County	$5,159,700.00
Missoula County	$4,172,000.00
Total:	$71,034,731.51

(3) The date of redemption shall be fixed by the county treasurer and shall not be less than 10 days after the date of publication or of mailing of notice. The county treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the county treasurer shall publish notice of redemption once in a newspaper published in the county. On the date fixed for redemption interest shall cease.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(3); amd. Sec. 24, Ch. 665, L. 1985.

Cross-References
City and municipality defined, 7-12-2101.
County Treasurer defined, 7-12-2101.
Special improvement district, 7-12-4206.

7-12-2175. Investment of interest and sinking fund money. (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation, federal savings and loan insurance corporation, or national credit union administration or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the sinking fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 1, Ch. 382, L. 1983; amd. Sec. 8, Ch. 421, L. 1985.

Cross-References
Special improvement district, 7-12-4207.

7-12-2176. Interest rate on unpaid assessments. The installments of assessments remaining unpaid bear simple interest at an annual rate of the sum of 1/2 of 1% a year plus the average interest rate payable on the outstanding bonds or warrants of the special improvement district.

History: En. Sec. 16, Ch. 665, L. 1985.

7-12-2177 through 7-12-2180 reserved.

7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which may create any rural special improvement district or districts for any purpose may (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged.

History: En. Sec. 1, Ch. 188, L. 1957; R.C.M. 1947, 16-1633; amd. Sec. 1, Ch. 422, L. 1983.

Cross-References
Board of County Commissioners defined, 7-12-2101.
Special improvement district, 7-12-4221.

7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund, the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured thereby. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured thereby.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district secured by the revolving fund or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of the board, be transferred to the revolving fund and the balance of such money or, if there is no outstanding loan, so much of such money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund or the improvement district's maintenance fund.

History: En. Secs. 2, 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1634, 16-1636(part); amd. Sec. 2, Ch. 308, L. 1981; amd. Sec. 2, Ch. 422, L. 1983; amd. Sec. 1, Ch. 621, L. 1985.

Cross-References
Board of County Commissioners defined, 7-12-2101.
Special improvement district, 7-12-4222.

7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs. (1) Whenever any rural special improvement district bond or warrant secured by the revolving fund and or any interest thereon shall become due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest

thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) Whenever any rural special improvement district maintenance fund does not have sufficient money to pay the cost of emergency repairs, the board of county commissioners by order or resolution may loan money from the revolving fund to such district maintenance fund. Such loan shall be repaid in annual installments in not more than 3 years. In no event may the loans interfere with the payments of bonds or warrants. The loan shall be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are not sufficient funds in the revolving fund to make the loans without interfering with the payment of bonds or warrants secured thereby, then the loans may not be made.

History: En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(1); amd. Sec. 1, Ch. 339, L. 1981; amd. Sec. 3, Ch. 422, L. 1983.

Cross-References
Board of County Commissioners defined, 7-12-2101.
Special improvement district, 7-12-4223.

7-12-2184. Lien arising due to loan from revolving fund. (1) Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments and on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1636(part).

Cross-References
Board of County Commissioners defined, 7-12-2101.
Special improvement district, 7-12-4224.
Liens, Title 71, ch. 3, part 1.

7-12-2185. Covenants to utilize revolving fund. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof, to the extent that funds are available; and

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-2182 by annually making such tax levy (or, in lieu thereof, such loan from

the general fund) as the board may so agree to and undertake, subject to the maximum limitations imposed by 7-12-2182.

(2) The undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered or any interest thereon remain unpaid.

(3) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund shall not secure the bonds or warrants and that the bonds or warrants shall be payable solely from the district fund created therefor and shall have no claim against the revolving fund.

History: En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(2); amd. Sec. 4, Ch. 422, L. 1983.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4225.

7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% of the then-outstanding rural special improvement district bonds and warrants secured thereby and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby or interest thereon, the board may order the amount the board considers greater than the amount necessary or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957; R.C.M. 1947, 16-1637; amd. Sec. 3, Ch. 303, L. 1981; amd. Sec. 5, Ch. 422, L. 1983.

Cross-References

Special improvement district, 7-12-4227.

7-12-2187 through 7-12-2190 reserved.

7-12-2191. Change in outstanding principal of district — relevy of assessments. If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of the bonds or warrants, as provided in 7-12-2173 and 7-12-2174, or if refunding bonds are issued pursuant to 7-12-2193 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The board shall reassess and relevy the assessments, with the same effect as an original levy, in reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160.

History: En. Sec. 17, Ch. 665, L. 1985; amd. Sec. 3, Ch. 449, L. 1989.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part); amd. Sec. 4, Ch. 382, L. 1983; amd. Sec. 54, Ch. 665, L. 1985.

Cross-References
Rural special improvement district, 7-12-2173.

7-12-4206. Redemption of bonds and warrants. (1) Special improvement district warrants or bonds shall be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-4205, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants are subject to redemption and prepayment at the option of the city, in order of registration, on any interest payment date.

(2) The date of redemption shall be fixed by the treasurer and may not be less than 10 days after the date of publication or mailing of notice, and on the date so fixed, interest ceases. The treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the treasurer shall publish notice of redemption once in a newspaper published in the city.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 12, Ch. 251, L. 1979; amd. Sec. 55, Ch. 665, L. 1985.

Cross-References
Rural special improvement district, 7-12-2174.

7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation, federal savings and loan insurance corporation, or national credit union administration or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the sinking fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 3, Ch. 382, L. 1983; amd. Sec. 9, Ch. 421, L. 1985.

Cross-References
Rural special improvement district, 7-12-2175.

7-12-4208 through 7-12-4220 reserved.

7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or districts

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for any purpose may in its discretion create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and interest thereon have been fully paid and discharged.

History: En. Sec. 1, Ch. 24, L. 1929; re-en. Sec. 5277.1, R.C.M. 1935; amd. Sec. 1, Ch. 255, L. 1971; R.C.M. 1947, 11-2269; amd. Sec. 6, Ch. 422, L. 1983.

Cross-References
Rural special improvement district, 7-12-2181.

7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund, the city or town council:

(a) (i) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; and

(ii) may include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount up to 5% of the principal amount of the bonds or warrants and deposit it in the revolving fund upon receipt of such proceeds; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants secured thereby. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured thereby.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district secured by the revolving fund or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

History: En. Secs. 2, 4, Ch. 24, L. 1929; re-en. Secs. 5277.2, 5277.4, R.C.M. 1935; amd. Secs. 2, 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2270, 11-2272(part); amd. Sec. 5, Ch. 308, L. 1981; amd. Sec. 2, Ch. 435, L. 1981; amd. Sec. 7, Ch. 422, L. 1983.

Cross-References
Rural special improvement district, 7-12-2182.

7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. Whenever any special improvement district bond or sidewalk, curb, and alley approach warrants which are secured by the revolving fund or any interest thereon shall be due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(1); amd. Sec. 8, Ch. 422, L. 1983.

Cross-References
Rural special improvement district, 7-12-2183.

7-12-4224. Lien arising due to loan from revolving fund. Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

Cross-References
Rural special improvement district, 7-12-2184.

7-12-4225. Covenants to utilize revolving fund. (1) In connection with any public offering of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available;

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-4222(1) by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb, and alley approach warrants so offered or any interest thereon remain unpaid.

(3) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund shall not secure the bonds or warrants and that the bonds or warrants shall be payable solely from the district fund created therefor and shall have no claim against the revolving fund.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(2); amd. Sec. 9, Ch. 422, L. 1983.

Cross-References
Rural special improvement district, 7-12-2185.

7-12-4226. Investment of surplus reserves. Surplus reserves not needed for immediate use may from time to time be invested in securities of the United States or certificates of deposit approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof transferred to the general fund of such city or town; or

(2) use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part); amd. Sec. 6, Ch. 308, L. 1981; amd. Sec. 3, Ch. 435, L. 1981; amd. Sec. 10, Ch. 422, L. 1983.

Cross-References
Rural special improvement district, 7-12-2186.

7-12-4228. Disposition of tax certificates and tax-sale property. (1) The council may sell any tax certificates issued on any sale or sales referred to in 7-12-4227(2). After acquiring title to property referred to in 7-12-4227, the city or town may lease such property, sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require.

(2) All proceeds from such sales of tax certificates and from such leasing, sale, or other disposition of the property shall belong to and be paid into the revolving fund and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose as hereinbefore provided.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).

7-12-4229. Disposal of funds deposited in revolving fund. Any funds without interest deposited in the revolving fund under 7-12-4169(2) less the amount of any loan to the district fund not repaid may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property, or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants is paid.

History: En. Sec. 4, Ch. 435, L. 1981.

7-12-4230 through 7-12-4240 reserved.

7-12-4241. Creation of supplemental revolving fund from parking meter revenue. Subject to the provisions of 7-12-4242, a city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of 7-12-4241 through 7-12-4258 for improvements undertaken pursuant to this part and part 41 for the following purposes: for paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading, or regrading one or more streets, alleys, avenues, or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley, or other public way.

History: En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).

7-12-4242. Application of provisions relating to supplemental revolving fund. The provisions of 7-12-4241 through 7-12-4258 shall not be applicable to any improvement unless the council shall find that 80% or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).

7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by

From such examination, it is our opinion that the aforesaid bonds including the initial temporary bond are in due form, that they have been lawfully issued, and that they are valid special obligations of the City of Billings in accordance with their terms and provisions; that the City has validly created Special Improvement District No. 1246, and provided for construction of various improvements of special benefit to the district, and has provided for the assessment of the cost of said improvements in accordance with the applicable statutes and the Constitution of the State of Montana; that the City has also validly established a Special Improvement District Revolving Fund to secure the prompt payment of its Special Improvement District Bonds, in accordance with the statutes of the State of Montana, under the provisions of which the City is obligated to levy and collect such taxes on all taxable proprty in the City as shall be necessary to meet the financial requirements of said fund, not exceeding in any one year five percent of the principal amount of the then outstanding Special Improvement District Bonds of the City.

We are also of the opinion that the interest on these bonds, while in fully registered form, is exempt from federal and for individuals from Montana state income taxes under present federal and state laws and regulations. Interest from the bonds is includable as taxable income for Montana state corporate license tax purposes.

This opinion is given to you upon the receipt of a properly executed Signature and Non-Litigation Certificate and certified Revolving Fund resolution.

Sincerely yours,

MICHAEL J. MULRONEY

Michael J. Mulroney

for LUXAN & MURFITT

MJM/ds
Encls.

EXHIBIT 3
DATE 3-17-93
SB-426

LUXAN & MURFITT
ATTORNEYS AT LAW

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MICHAEL J. MULRONEY
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MICHAEL J. RIELEY

December 1, 1985

Grande & Co.
801 Hoge Building
Seattle, WA 98104

City of Billings
City Hall
P.O. Box 1178
Billings, MT 59103

Re: City of Billings, Montana - Special Improvement District No. 1246 Bonds - $120,000

Gentlemen:

We have examined a certified transcript of all proceedings taken in connection with the issuance by the City of Billings, Montana, of its Special Improvement District No. 1246 Bonds, dated December 1, 1985, in the total principal sum of $120,000. The bonds which are twenty-four in number and numbered in order of their registration from one through twenty-four have been signed, sealed and registered in the manner required by law. Each bond is in the denomination of $5,000.

The bonds bear interest at the following rates:

Bond Numbers (Principal Installments)	Interest Rate
1 - 9	9.00%
10 - 15	9.50%
16 - 24	10.00%

Basic interest on this bond is payable semiannually, commencing January 1, 1987, and on the first day of January and the first day of July of each year, through January 2, 2001, and additional interest hereon is payable on the date specified unless this bond is paid previous thereto. The bonds mature on or before the 1st day of January, 2001. Interest on the bonds is to be paid by the Finance Director/ Treasurer from the Special Improvement District No. 1246 Fund when due. Whenever there is any balance in the fund after paying interest due on all bonds payable therefrom, there will be called for payment and redemption outstanding bonds in an amount which, together with interest thereon to the date of redemption, will equal the amount of the fund on the redemption dte. The bonds are redeemable in order of their number. Notice of such intended redemption must be given at least ten days prior to the redemption date by written notice to the

[Proposed form of opinion in light of the *Carbon County* decision]

$_____
Special Improvement District No. ___ Bonds
City of _____, _____ County, Montana

As Bond Counsel in connection with the authorization, issuance and sale by the City of _____, _____ County, Montana (the "City"), of the obligations described above, dated, as originally issued, as of _____, 1993 (the "Bonds"), we have examined certified copies of certain proceedings taken, and certificates and affidavits furnished, by the City in the authorization, sale and issuance of the Bonds, including the form of the Bonds. As to questions of fact material to our opinions, we have assumed the authenticity of and relied upon the proceedings, affidavits and certificates furnished to us without undertaking to verify the same by independent investigation. From our examination of such proceedings, certificates and affidavits and on the basis of existing law, it is our opinion that:

1. The City has validly created Special Improvement District No. ____ (the "District"), provided for the construction of various improvements of special benefit to the District and has covenanted to levy special assessments for the entire cost of the improvements, estimated at $_____, against the assessable area of each lot or parcel of land within the District. The special assessments are to be payable in installments, with interest on the balance of the special assessments remaining unpaid, and are to be deposited in the Special Improvement District No. ____ Fund of the City (the "District Fund"). The principal of and interest on the Bonds are payable solely from the District Fund.

2. The City has established a Special Improvement District Revolving Fund (the "Revolving Fund") to secure the payment of certain of its special improvement district bonds, including the Bonds. The City has also agreed, to the extent permitted by Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), to issue orders annually authorizing loans or advances from the Revolving Fund to the District Fund, in amounts sufficient to make good any deficiency in the District Fund, to the extent that funds are available, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent

of the principal amount of the City's then outstanding special improvement district bonds secured thereby.

While the Act states that the obligation of the City to make loans from the Revolving Fund to the District Fund is to continue so long as principal of and interest on the Bonds remains unpaid, the decision of the Montana First Judicial District Court in *Carbon County v. Dain Bosworth, Inc., et al.*, CDV 90-1196, holds in effect that, in certain circumstances, the City is not required to make a loan from the Revolving Fund to the District Fund. The decision of the Court is unclear, and we are unable to define, as a legal matter, the circumstances under which the City may be discharged from making a loan from the Revolving Fund to the District Fund. Because of these uncertainties, we are unable to express an opinion as to the enforceability of the covenant of the City to make loans or advances from the Revolving Fund to the District Fund as described in the preceding paragraph. (A brief discussion of the Court's decision is contained under the caption "Risk Factors" in the Official Statement, dated _____, 1993, relating to the Bonds.) Consequently, under existing law, prospective purchasers of the Bonds should not rely on the Revolving Fund to provide security for the payment of principal of and interest on the Bonds.

3. The Bonds are valid and binding special obligations of the City enforceable in accordance with their terms and the provisions of the Constitution and laws of the State of Montana now in force, including the Act; provided that we express no opinion as to the enforceability of the obligation of the City to make loans or advances from the Revolving Fund to the District Fund, as discussed in paragraph 2 hereof.

4. Interest on the Bonds: (a) is not includable in gross income for federal income tax purposes; (b) is not an item of tax preference includable in alternative minimum taxable income for purposes of the federal alternative minimum tax applicable to all taxpayers; and (c) is includable in adjusted current earnings of corporations in determining alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations.

5. Interest on the Bonds is not includable in gross income for State of Montana individual income tax purposes, but is includable in the computation of income for purposes of the Montana corporate income tax and the Montana corporate license tax.

Our opinions expressed in paragraphs 1, 2 and 3 above are subject to the effect of any applicable state or United States laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors' rights and the exercise of judicial discretion.

The opinions expressed in paragraph 4 above are subject to the condition of the City's compliance with all requirements of the Internal Revenue Code of 1986,

as amended, that must be satisfied subsequent to the issuance of the Bonds in order that interest on the Bonds may be, and continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with these continuing requirements. Its failure to do so could result in the inclusion of interest on the Bonds in gross income for federal income tax purposes, retroactive to the date of issuance of the Bonds. Except as stated in this opinion, we express no opinion regarding federal, state or other tax consequences to the owners of the Bonds.

We have not been engaged, and have not undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or any other offering materials relating to the Bonds and, accordingly, we express no opinion with respect thereto.

Dated this _____ day of _____, 1993.

DORSEY & WHITNEY

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EXHIBIT 3
DATE 3-17-93
SB-426

$595,000
Pooled Rural Special Improvement District Bonds,
Series 1987A
(Rural Special Improvement District Nos. 414 and 416)
County of Missoula, Montana

We have acted as Bond Counsel in connection with the issuance by Missoula County, Montana (the County), of its Pooled Rural Special Improvement District Bonds, Series 1987A (Rural Special Improvement District Nos. 414 and 416) (the Bonds), in the aggregate principal amount of $595,000, originally dated as of August 1, 1987, and payable solely from the Pooled Rural Special Improvement District Nos. 414 and 416 Fund (the Fund). The Bonds are issuable as fully registered bonds of single maturities in denominations of $5,000 or any integral multiple thereof. First Interstate Bank of Billings, N.A., will act as Bond Registrar and Paying Agent for the Bonds (the Registrar), unless a successor registrar is appointed by the Board of County Commissioners (the Board).

The Bonds mature on July 1 in the years and amounts set forth below, subject to prior redemption, and bear basic interest from the date of original registration until their respective maturities or prior dates upon which they have been duly called for redemption at the rates per annum set forth opposite such years and amounts, respectively:

Year	Amount	Basic Rate	Year	Amount	Basic Rate
1988	$35,000	5.50%	1996	$40,000	7.40%
1989	40,000	6.00	1997	40,000	7.60
1990	40,000	6.25	1998	40,000	7.70
1991	40,000	6.50	1999	40,000	7.80
1992	40,000	6.75	2000	40,000	7.90
1993	40,000	7.00	2001	40,000	8.00
1994	40,000	7.10	2002	40,000	8.00
1995	40,000	7.25			

Each of the Bonds represents one or more principal installments of the issue of the same maturity. Principal installments of the issue are numbered from 1 through 119, each in the amount of $5,000.

Basic interest on the Bonds is payable on each January 1 and on July 1, commencing January 1, 1988, by check or draft mailed by the Registrar to the owners of the Bonds as such appear of record in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. The Bonds also bear additional interest, represented by and payable in accordance with separately registered additional interest certificates, as described in a resolution adopted by the Board on August 5, 1987. Principal of and interest on the Bonds are payable in lawful money of the United States government.

If on any interest payment date there is a balance in the District Fund after paying principal and interest due on all Bonds payable therefrom, from surplus funds not needed to pay costs of the improvements undertaken in the Districts (as hereinafter defined) or from the prepayment of special assessments levied in the Districts, the County Clerk and Recorder/County Treasurer is required by law to call for redemption outstanding Bonds or principal installments thereof in an amount which, together with interest thereon to the interest payment date, will equal the amount of the District Fund on said date. The Bonds are subject to redemption at the option of the County from other sources of funds available therefor on any interest payment date. The redemption price is equal to the amount of the principal installment or installments of the Bonds to be redeemed plus interest accrued to the date of redemption. Notice of redemption is to be mailed at least ten days before the date specified for redemption to the registered owner or owners of the Bonds to be redeemed at their addresses appearing in the bond register. Basic interest on any Bond or principal installment thereof so called for redemption ceases to accrue on the redemption date. The County has agreed not to call Bonds for redemption from the proceeds of rural refunding special improvement district bonds before July 1, 1992.

For the purpose of this opinion, we have examined certified copies of certain proceedings taken and certificates

and affidavits furnished by the County in the authorization, sale and issuance of the Bonds, including the form of the Bonds. From our examination of such proceedings, certificates and affidavits, assuming the authenticity thereof, the genuineness of the signatures thereon and the accuracy of the facts stated therein, and based on United States and Montana laws, regulations, rulings and decisions in effect on the date hereof, it is our opinion that:

1. The County has validly created Special Improvement District Nos. 414 and 416 (the Districts), provided for the construction of various improvements of special benefit to the Districts and has covenanted to levy and relevy assessments for the entire cost of the improvements, estimated at $260,000 for District No. 414 and $335,000 for District No. 416, against the assessable area of each lot or parcel of land within the respective Districts. The special assessments are to be payable in installments, with interest on the balance of the special assessments remaining unpaid, and are to be deposited in the District Account of the rural special improvement district in which such assessments are levied, which constitute subaccounts in the District Fund.

2. The County has also validly established a Rural Special Improvement District Revolving Fund (the Revolving Fund) to secure the prompt payment of certain of its special improvement district bonds, including the Bonds, and has undertaken and agreed to issue orders annually authorizing loans or advances from the Revolving Fund to the District Fund, in amounts sufficient to make good any deficiency in the District Fund, to the extent that funds are available, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the County's then outstanding rural special improvement district bonds secured thereby.

3. The Bonds do not constitute indebtedness of the County within the meaning of any constitutional or statutory limitation, but are valid and binding special obligations of the County enforceable in accordance with their terms and the provisions of the Constitution and laws of the State of Montana now in force, including Montana Code Annotated, Title 7,

Chapter 12, Part 21, as amended, except to the extent that enforceability thereof may be limited by state or United States laws relating to bankruptcy, reorganization, moratorium or creditors' rights generally.

4. The Bonds are not "arbitrage bonds" within the meaning of Section 148 of the United States Internal Revenue Code of 1986 (the Code), and the Treasury Regulations promulgated thereunder.

5. Basic interest to be paid on the Bonds is not includible in gross income of the recipient for United States income tax purposes or State of Montana individual income tax purposes. Interest on the Bonds is includible in book income or earnings and profits of corporations for the purpose of a corporate alternative minimum tax, in the computation of alternative minimum taxable income for purposes of the environmental tax imposed on corporations by Section 59A of the Code and in the income of a foreign corporation for purposes of the branch profits tax imposed by Section 884 of the Code, each for taxable years beginning after December 31, 1986. We express no opinion with respect to the exemption from income taxation of the interest represented by the additional interest certificates.

6. The Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, and financial institutions described in Section 265(b)(5) of the Code, for taxable years ending after December 31, 1986, will be allowed a deduction under the Code for that portion of the taxpayer's interest expense which is allocable to interest on the Bonds within the meaning of Section 265(b).

In the case of an insurance company subject to the tax imposed by Section 831 of the Code, for taxable years beginning after December 31, 1986, the amount which would otherwise be taken into account as losses incurred under Section 832(b)(5) of the Code must be reduced by an amount equal to fifteen percent of the interest paid on the Bonds that is received or accrued during the taxable year.

We have not been engaged and have not undertaken to review the Official Statement or other offering materials relating to the Bonds and, accordingly, we express no opinion with respect to the accuracy, completeness or sufficiency thereof.

Dated this 12th of August, 1987.

Dorsey & Whitney

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-17-93
BILL NO. SB 426

TESTIMONY - SB 426

DNRC by Anna Miller

The Department of Natural Resources and Conservation (DNRC) has two loan programs which make loans to municipalities for water and sewer facilities. The State Revolving Fund (SRF) program and the Coal Severance Tax (CST) loan program have loans outstanding of 10 million dollars. These loans were made to municipalities with the revolving funds in place to be used as security.

If the DNRC is to continue its loan programs and the revolving fund is not in place the loan and their repayment become very risky investments for the state.

For many types of infrastructure projects Special Improvement Districts or Rural Special Improvement Districts are the only types of financing that are logical for the community to use.

Therefore, the DNRC supports SB 426 and encourages its passage.

Important Points to be made for SB 426

1) SID or RSID are the only sensible financing tool. General Obligation or Revenue Bonds won't work. Bedroom communities which are developing and are hooking into existing water and sewer systems must pay for their infrastructure.

2) If there is no revolving fund, this is a security risk for the state. Private investor may not buy municipal SID or RSID bond issues. Interest rates will go up substantially on SID and RSID bonds.

3) A minority of revolving funds are in trouble; the majority of revolving funds are in good financial shape.

4) Many SID and RSID loans have been authorized but not closed on. If the state doesn't choose to finance these loans there could be federal dollars for grants lost to the state and the project may not be build. Example - Evergreen.

5) SID and RSID are very delicate. If one person does not pay, the bond issue is in default. That's why SID and RSID revolving funds are so essential.

6) Cities and counties, may be need to look at an area before they allow it to issue SID or RSID bonds. Maybe areas should be 50% to 75% developed before SID or RSID bonds are issued.

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FINANCE AND DEBT MANAGEMENT
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UTILITY BILLING
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GRANT ADMINISTRATION

CHUCK STEARNS TESTIMONY ON SENATE BILL #426
March 17, 1993

The City of Missoula supports Senate Bill #426 as a means of assuring the use of the Special Improvement District (SID) Revolving Fund as security for SID bonds. SID's have long been used to provide infrastructure improvements for the residents of specified districts and the City of Missoula has used its revolving fund for security since 1930.

Currently the sources of security for bondholders of SID bonds are the value of the land on which the improvements are going, the SID Revolving Fund, and the ability of a local government to add a 1/2% surcharge on the interest rate of assessments to help offset delinquencies. However, on February 5, 1993, Judge Thomas Honzel of the Montana First Judicial District Court ruled that, under certain circumstances, a local government could abrogate their prior contractual covenant to provide loans from a RSID revolving fund and could no longer be compelled to levy property taxes to support the RSID revolving fund.

This abrogation of a bond covenant is very disturbing and disruptive to other SID and RSID bond issuers because the failure of Carbon County to live up to their covenants will likely affect future SID bond issuances in Montana. The importance of SID financing to infrastructure development is shown by the City of Missoula's SID bond issues in the past three years below:

SID#	Area of Missoula	Type of Improvements	Dollar Amount
491	Pattee Canyon	Street and Drainage	$ 143,000
492	University Area	Alley Paving	$ 13,900
494	Pattee Canyon	Waterline Extension	$ 40,300
495	East Cold Springs	Sewer Extension (300 houses)	$ 846,000
496	Upper Rattlesnake Valley	Street Paving	$ 18,000
497	Wapikiya/Bellevue	Sewer Extension (700 houses)	$1,241,000
498	Wapikiya/Bellevue	Sewer Extension (w/ SID 497)	$2,465,000
499	Hillsdale Street	Street Paving	$ 12,500
500	University Area	Alley Paving	$ 11,100
501	Northwest Missoula	Sewer Extension	$1,060,000
504	West Side	Sewer Extension	$ 13,000
	Totals		$5,863,800

Obviously, issuing $5,863,800 in bonds in the last three years has been a critical component to Missoula's development, growth, and ability to deal with sewer extensions and environmental issues. Of these $5,863,800 in SID bonds, $3,525,000 or 60% of them were financed through Montana's State Revolving Fund (SRF) program for low interest rate sewer financing.

We encourage your support of SB426 as a means of restoring and assuring the viability of SID bond issues in the future. We are not asking to change the situation, rather to restore the situation to what everyone thought existed prior to February 5th.

SENATE TAXATION
EXHIBIT NO. 5
DATE 3-17-93
BILL NO. SB 426

TESTIMONY IN SUPPORT OF SB426

The City of Great Falls has an adopted SID policy which provides reasonable protection to the taxpayer. Before an SID is approved it must meet a demanding set of standards. The emphasis is on quality projects that are financially sound investments. Impairing local government's use of SID's would be detrimental to most capital improvement programs.

SID's are an important option for project financing:

-historically one of the financing options available

-assesses those who benefit from a public facility

-spreads cost over the life of a project

-insures fiscal and administrative responsibility

-ease of public administration

-organized, legal method

-economic effects:

--needed public improvements (mandated, past mistakes, development)

--combined or leveraged funding

--comprehensive planning

SENATE TAXATION
EXHIBIT NO. 6
DATE 3-17-93
BILL NO. SB 426

SENATE TAXATION
EXHIBIT NO. 7
DATE 3-17-93
BILL NO. SB426

TESTIMONY

SENATE BILL #426

MR. CHAIRMAN AND MEMBERS OF THE SENATE TAXATION COMMITTEE.

MY NAME IS RICHARD A. NISBET, DIRECTOR OF PUBLIC WORKS, CITY OF HELENA. I AM REPRESENTING THE HELENA CITY COMMISSION IN SUPPORT OF SENATE BILL #426.

THE CITY OF HELENA CREATED 58 SPECIAL IMPROVEMENT DISTRICTS RESULTING IN A SALE OF 17.6 MILLION DOLLARS IN SID BONDS SINCE 1976. THIS IS AN AVERAGE OF OVER 1 MILLION DOLLARS PER YEAR FOR THE LAST 16 YEARS. WE HAVE USED SID BONDS TO CONSTRUCT STREETS, WATER AND SEWER MAINS THROUGHOUT THE COMMUNITY. ABOUT 10 YEARS AGO, THE CITY COMMISSION ADOPTED A POLICY WHERE RAW LAND DEVELOPERS HAD TO INSTALL THE UNDERGROUND UTILITIES AT THEIR COST, AND THE CITY WOULD CREATE A SID FOR THE PAVEMENT, CURBS AND GUTTERS AND DRAINAGE FACILITIES. WITHOUT THE ABILITY TO ISSUE SID BONDS TO FINANCE IMPROVEMENTS, ORDERLY GROWTH TO CITIES WOULD ESSENTIALLY COME TO A HALT.

CURRENTLY, WE ARE WORKING WITH THREE RESIDENTIAL IMPROVEMENT DISTRICTS WITHIN THE CITY LIMITS AND ANTICIPATE THE IMPROVEMENTS TO BE CONSTRUCTED THIS COMING SUMMER. THESE IMPROVEMENTS WOULD NECESSITATE THE ISSUANCE OF ABOUT 1.2 MILLION DOLLARS OF SID BONDS. ACCORDING TO THE BOND COUNSEL, WITHOUT SOME REVISIONS TO THE CURRENT SID LAWS AS PROPOSED IN SENATE BILL #426, THE ISSUANCE OF SID BONDS IN THE STATE OF MONTANA IS QUESTIONABLE.

THE CITY OF HELENA URGES YOUR SUPPORT OF SENATE BILL #426.

THANK YOU.

SB#426

The City of Kalispell
Incorporated 1892

Telephone (406) 752-6600
P.O. Box 1997
Zip 59903-1997

SENATE TAXATION
EXHIBIT NO. 8
DATE 3-17-93
BILL NO. SB426

CITY OF KALISPELL TESTIMONY SB #426

Chairman Halligan and Members of the Senate Taxation Committee:

The City of Kalispell is presently experiencing unprecedented growth, both commercial and residential. As you are aware, the Special Improvement District policy is one method local governments can use to assist developers finance the improvements necessary to meet the housing demands associated with growth.

Although we do not have a current need for SID financing, there is a likely possibility that within the immediate future, we will be entertaining developer's requests for such assistance. Because we recognize the risk associated with this type financing, we are in the process of developing more restrictive guidelines for SID funding to lower the risk of default.

Our policy will require considerable developer equity in the project improvements, limiting SID financing to street, curb, gutter and sidewalks. It is our opinion that a developer is less likely to walk away from a subdivision when he has cash equity in the improvements.

It is our concern that without the amendment to the SID policy you are considering here today, that local governments will be unable to sell bonds because of the poor risk they represent to the bond buyer. We believe that the suggested amendment to present law, requiring local government to fully fund the SID 5% Revolving Fund each and every year of the life of the bonds, seems to make extremely good management sense and provides the bond buyers with some sense of security.

We therefore request your support of SB #426.

City of Belgrade

STATE OF MONTANA

HENRY D. HATHAWAY
DIRECTOR OF PUBLIC WORKS

JOSEPH A. MENICUCCI
CITY MANAGER

MARILYN M. FOLTZ
CLERK - TREASURER

SENATE TAXATION
EXHIBIT NO. 9
DATE 3-17-93
BILL NO. SB 426

March 17, 1993

Senator Mike Haligan, Chair,
Senator Dorothy Eck, Vice Chair,
Members of the Senate Taxation Committee,

The City of Belgrade has experienced tremendous growth over the past ten years. Subdivisions that were platted from the early 1890's to the mid 1970's remained generally uninhabited until recent years. Virtually non-existent trails and gravel streets served the sparsely populated areas without major problems for many years. The demand for residential building sites in the Gallatin valley, however, transformed the once quiet Belgrade areas into normal residential neighborhoods. The gravel streets have become a major source of dust and are a constant maintenance problem for the City of Belgrade.

Due to limited finances, the City has depended on Special Improvement Districts to finance the necessary improvements in these neighborhoods. Over the past few years, the City has installed necessary storm drainage and paved Fifty (50) Blocks of streets. Twelve (12) Blocks are scheduled to be improved this spring. In addition, three neighborhood groups are currently in the petition stage of Special Improvement District creation. The existing gravel streets will remain unpaved if the City is unable to create Special improvement districts and sell the necessary bonds.

The use of Special Improvements Districts in our Cities and Towns are absolutely essential to facilitate the rebuilding of our community's infrastructures. I urge you to support and pass Senate Bill 426.

Sincerely,
CITY OF BELGRADE

Joseph A. Menicucci

Joseph A. Menicucci
City Manager

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BERNARD E. LONGO
W. S. MATHER
OF COUNSEL

March 16, 1993

SENATE TAXATION
EXHIBIT NO. 10
DATE 3-17-93
BILL NO. SB426

TO: Mike Halligan
Chairman of the Senate Taxation Committee
and
Committee Members

FROM: Ward Swanser
Counsel for Carbon County

RE: Senate Bill 426

As attorneys for Carbon County in the underlying lawsuit, we wish to protest Senate Bill 426 for the reasons set forth hereafter. Senate Bill 426 is poor legislation for many reasons, including the fact that it is asking the legislature to reverse a court decision, it is misleading, it is unnecessary and is an attempt to place a band-aid on a complicated legal issue which should require further study by the legislature to review not only this bill but other options as well.

1. **The Purpose of Revolving Fund.** Initially, the purpose of a revolving fund was to serve as a stop gap measure to keep the bonds from going into default. Because bonds were to be paid for assessments upon the benefitted land and because taxes had to be in default for three years before the property could be sold, it was necessary in order to keep the bonds from going into default to devise a mechanism whereby loans could be extended to district funds. It was envisioned that once the property was sold, the loan would be repaid. Special improvement district bonds were always limited obligation bonds, and the revolving fund statutes were not designed to convert them into general obligations of the county. Senate Bill 426 is attempting to do just that.

2. **Legal Issues Raised by Senate Bill 426 are very Complex in Nature.** These issues were the same issues that were presented to Judge Honzel in Cause No. CDV 90-1196, Carbon County v. Underwriters and Bondholders. I am attaching to this letter a memorandum dated March 8, 1992, which discusses the legal issues that were raised in the underlying lawsuit. The briefs submitted by the parties were over four inches in height, and it took Judge Honzel over eight months to render a decision in that action. The legislature should not be expected to address these complex legal issues in the short time frame that is left in this session. If any action is going to take place to amend the revolving fund statutes, or alter the obligations the counties have to special improvement districts, an interim study committee should be appointed to make recommendations to the 1995 legislature.

3. **The Ruling of Judge Honzel did not Create a Crisis Situation Demanding Immediate Attention.** Judge Honzel's decision will have little impact on existing RSID's. Judge Honzel said that in the Carbon County situation where the district had become insolvent and loans from the revolving fund would never be able to make up the deficiency, there was no obligation to continue to make the loans from the revolving fund to the district fund. In the Carbon County situation, Carbon County had already loaned more than $400,000 from the revolving fund to the district fund. Judge Honzel's decision leaves intact the requirement to create a revolving fund and the requirement to continue to loan from the revolving fund, to the district fund, under normal circumstances. Before a county or city could discontinue loans from the revolving fund, you would have to show that the district was insolvent and loans made from the revolving fund to the district fund had no chance of being repaid.

4. **Carbon County Did Not Welch on any of its Covenants or Agreement with the Bondholders.** The bondholders have alleged that Carbon County welched on its obligation to the bondholders. This is simply not true. Carbon County created a revolving fund, made levies against its taxpayers, and loaned money from the revolving fund to the district fund until it became obvious that the loans were unsecured. At this point in time, Carbon County had already loaned in excess of $400,000 to the district fund. Carbon County then sought a declaratory ruling as to whether or not it must continue to make levies and loans from the revolving fund to the district fund. Carbon County did nothing more than exercise its legal right to ask a court to decide what its obligations were.

5. **In the Carbon County Case, the Underwriters Did Have Additional Security Offered to Them Which They Gave Up.** When Carbon County first attempted to sell bonds for the project, there were no bidders on the bonds. Later, underwriters approached the county and said they would agree to purchase the bonds and advised the county that they had entered into an agreement to obtain additional security from the joint venturers. In fact, the joint venturers had agreed to guarantee payment of the first eight years of assessments on all developer-owned lots. Unbeknownst to the county, the same bond counsel that was representing the county struck that guarantee from the security agreement and rendered it meaningless.

6. **Senate Bill 426 Amounts to the City or County Placing a Mortgage Upon All of its Lands up to the Amount of the Bonded Indebtedness.** Senate Bill 426 changes the nature and character of a special obligation bond into a limited general obligation of the county. In fact, over a twenty year bond issue it would place a mortgage on the county up to the full amount of the bonded indebtedness.

7. **Senate Bill 426 has a Dramatic Impact upon the Local Revenues of the County.** The fiscal analysts report states that there is no local impact created by Senate Bill 426. Nothing could be further from the truth. In fact, Senate Bill 426 would create an impact on the local taxpayers up to the amount of the bonded indebtedness. In Carbon County's case, it could amount to $2,250,000.

8. **The Underwriters, Bondholders and Bond Counsel are Attempting to Reverse a District Court Decision.** Senate Bill 426 asks the legislature to reverse the ruling of a district court

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judge. If the underwriters, bondholders and bond counsel felt confident of their legal position in the Carbon County case, they would appeal the same to the Supreme Court and wait for its final decision.

9. **Carbon County is Being Required to Wage its Battle with the Underwriters and Bondholders in Three Different Forums at the Same Time.**

a. It is presently involved in the judicial forum in the case of Carbon County v. Bondholders and Underwriters.

b. It now finds itself addressing the same issues in the legislature under Senate Bill 426.

c. Carbon County is also embroiled in a bankruptcy case filed by the joint venturers which denies it the right to collect existing taxes and prohibits it from selling the lots to collect back taxes and assessments.

10. **Senate Bill 426 is Deceptively Misleading.** Senate Bill 426 alters entirely the nature and character of the revolving fund. It changes what was a limited obligation into a limited general obligation. It changes what was a loan from the county's revolving fund into a pledge from the county's taxpayers and it changes what was once a revolving fund into a guarantee fund. It does all this under the guise of clarifying existing law.

11. **It is the Bondholders, and not the County, that is in the Best Position to Protect Themselves.** If a special improvement district is presented to the city or county wherein the improvements are worth more than the value of the land or subsequently thereafter the land depreciates in value so that improvements become worth more than the value of the land, then the bondholders and underwriters can and often do require additional security in the forms of letters of credit or guarantees to make sure that the assessments are timely and promptly made. After all, the bondholders have always been told that their bond would be paid from assessments against the property. That means they had to look to the property itself to determine whether or not it is worth enough to support the assessments which would be levied against it. If not, then they should and could require additional security.

12. **Special Improvement District Bonds Should be Viewed as Being Similar to Revenue Bonds.** In Montana, you can have revenue bonds, that don't obligate the general taxpayers to pay any portion of the bonds. The bondholders look only to revenue from the project to pay off the bonds. Under a revenue bond project, the bondholders often require that a reserve fund be created at the time of the bond issue as additional security. Their bonds will be retired. There is no obligation of the general taxpayers to loan money to retire revenue bonds. Special improvement district bonds are analogous to revenue bonds, the only difference being that the special improvement district bondholders look to the land while the revenue bondholders look to the project.

13. **Proponents of Senate Bill 426 have a Conflict of Interest.** Bondholders, underwriters and bond counsel are all involved in the underlying Carbon County case and they have a direct financial stake and interest in this legislation. For that reason alone, the legislature should appoint an interim committee to study the issues involved and determine what is best for all the people of Montana rather than make a hasty decision based upon the urgings of the people who have so much at stake.

14. **No One is Representing the Innocent Taxpayers.** The innocent taxpayers in Montana are the ones who have the most to lose. They are now being asked to guarantee every special improvement district up to 5% per year. This could amount to paying off the total of the principal of every special improvement district over a twenty year term. Yet, the same taxpayers are denied a voice in the creation of the bonded indebtedness and do not receive any benefit from the improvements.

15. **Other States Have Come Up with Far More Equitable Ways to Address the Questions of the Revolving Fund Than Those Proposed by Senate Bill 426.** Those include:

a. Capitalizing an amount for a revolving fund from the bond proceeds. This has bee advocated by Yellowstone Clerk and Recorder Mert Klundt. If you need a revolving fund for say 20% of the amount of the district indebtedness, then capitalize that amount and set it aside in a separate fund to be used for the prompt payment of the assessments as they become due.

b. Creation of a deficiency fund. In Colorado, a deficiency fund is created to make up any deficiency in the special improvement districts. Loans are made, however, only after 80% of the outstanding bonds and interest have been paid in full. Under this scenario, there would be ample protection to the district because after 80% of the outstanding indebtedness has been paid by the property owners, because after that there should be sufficient equity for any subsequent loans made to the district fund.

c. Creation of a guarantee fund. In Utah, a guarantee fund is authorized for the retirement of specific special improvement district bonds. In Utah this fund is created by statute which authorizes a one mill levy to be used to retire special improvement bonds. Under this scenario the county would know what its obligation would be up front, and after that, any additional funds would come from a general obligation fund voted on by the taxpayers.

d. Creation of a special fund. In Wyoming, the Wyoming legislature created a revolving fund by advancing proceeds from the city's state gasoline or cigarette sales tax to a special fund. That sum, however, was limited to 2% of the total outstanding bonds issued for a period of 10 years or no more than 20% of the total outstanding bonded obligation. If this approach had been used in the Carbon County scenario, then the maximum amount that the Carbon County taxpayers would have been asked to bear would be 20% of $3 million, or $600,000.

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CONCLUSION

For all of the aforementioned reasons, we ask that the Senate Taxation Committee reject Senate Bill 426. If you feel that some action be taken on this issue, you should appoint an interim study commission to address all of the issues raised and come up with a series of alternatives for the 1995 legislature.

RESPECTFULLY SUBMITTED.

MOULTON, BELLINGHAM, LONGO
& MATHER, P.C.

By Ward Swanser
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BERNARD E. LONGO
W. S. MATHER
OF COUNSEL

March 8, 1993

TO: Interested Parties

FROM: Ward Swanser and Tom Singer
Counsel for Carbon County

RE: Carbon County litigation and SB 426: An Act Generally Revising the Laws Concerning Special Improvement District and Rural Special Improvement District Revolving Funds

Our law firm represented Carbon County in the litigation that has led to the introduction of Senate Bill 426. In that litigation, the defendant bond underwriters were represented by Dorsey & Whitney. In opposing Carbon County's motion for summary judgment in that litigation, Dorsey & Whitney made the same argument that Mae Nan Ellingson of Dorsey & Whitney makes in her February 22, 1993 memo in support of Senate Bill 426. Judge Honzel rejected the arguments of Dorsey & Whitney and granted summary judgment to Carbon County. He did not make that decision casually or thoughtlessly. He understood the issues, considered them carefully, and drafted a well-reasoned opinion in favor of Carbon County. His conclusions should not be rejected by the legislature until the legislature gives the same time and consideration to these issues.

The issues are not as simple as Ms. Ellingson's memorandum suggests. Senate Bill 426 does far more than clarify uncertainty that was supposedly created by Judge Honzel's decision "as to the nature and extent of the revolving fund pledge." As proposed, Senate Bill 426 changes the revolving fund into a guarantee fund. It converts a county's or city's promise to loan monies to the revolving fund into a pledge of general revenues to pay the bonds. Thus, it converts these "special" obligation bonds, which were payable only from assessments against the benefitted land, into limited "general" obligation bonds, which are payable in part from general revenues of the county. Carbon County submits that those changes should not be made because they are bad public policy, and violate constitutional and statutory debt limitations. However, if the legislature adopts Senate Bill 426, it must understand that it is not simply re-establishing the law that existed before Judge Honzel's decision. It is creating a fundamentally different obligation for counties and cities.

I. JUDGE HONZEL'S DECISION DID NOT CREATE UNCERTAINTY; IT RESPONDED TO AMBIGUITIES THAT WERE IN THE RSID STATUTES.

Ms. Ellingson's memorandum suggests that the RSID statutes were clear and subject to only one interpretation before Judge Honzel's decision. That suggestion is simply incorrect. Carbon County filed the litigation because it was uncertain whether the RSID statutes required it to continue to fund the revolving fund. Carbon County was uncertain because the statutes were ambiguous. Carbon County simply asked the judge to interpret the statutes and unravel the ambiguity.

The easiest way to explain the ambiguity is to present the arguments that Judge Honzel heard. Dorsey & Whitney has presented and will present its interpretation of the statutes in Ms. Ellingson's memorandum. If it was confident that the RSID statutes are clear and that its interpretation would prevail in court, Dorsey & Whitney would not be here lobbying for Senate Bill 426. It would simply appeal Judge Honzel's decision to the Montana Supreme Court and wait for the decision to be reversed. Instead, Dorsey & Whitney has proposed SB 426 to eliminate the ambiguities in the present statute. Because of those ambiguities, Carbon County could reasonably interpret the statutes to require no further loans by the county to the RSID revolving fund after the district became insolvent. Carbon County's interpretation follows.

A. Historical Background.

The Montana legislature first authorized cities to create special improvement districts (SID's) in 1913. Two years later, the legislature authorized counties to create rural special improvement districts (RSID's). Both SID's and RSID's were authorized so that public improvements could be financed by assessing the cost of the improvements against the benefitted property. To pay for the improvements in a district, the county or city would sell bonds and use the proceeds to pay for the improvements. The total cost of the bonds, including interest, was then assessed against the property in the district in the same manner as taxes were assessed. As the assessments were collected, they were deposited in bond funds and used to pay the accrued interest and to retire the bonds as they became due.

From 1913 until 1929, Montana law did not authorize creation of revolving funds. In 1929, the Montana legislature authorized revolving funds only for SID's. The revolving fund was authorized because of a quirk in the law concerning tax deeds. Apparently, the law provided that when property was sold at a tax sale and a tax deed was issued, all liens on the property, including the city's lien for past and future SID assessments and installments, were extinguished. Stanley v. Jeffries, 86 Mont. 114, 284 P. 134 (1929). Because future SID assessments were wiped out, the city could not pay a portion of the principal and interest on the bonds. The legislature tried to correct the problem and to make SID's more saleable by allowing cities to use a revolving fund to make up the shortfalls in principal and interest.

The legislature did not authorize counties to create revolving funds for RSID's until 1957, thirty years after revolving funds were authorized for SID's. In the meantime, the legislature corrected the quirk in the tax deed statutes. A 1937 legislative amendment provided that a tax deed

did not extinguish future assessments. Thus, in 1957, the legislature was not insuring full payment of the bonds when it allowed counties to create revolving funds for RSID's. That concern had been addressed years before.

B. Purpose of the Revolving Fund.

Instead, the legislature allowed counties to create revolving funds "in order to secure prompt payment of . . . bonds . . . and the interest thereon as it becomes due." §7-12-2181, MCA (emphasis added). The revolving fund is a stop gap measure that advances funds to make bond payments when assessments have not been timely paid. The advances from the revolving fund are "loans." §7-12-2183(1), MCA. The statutes contemplate that the loans will be repaid. The statutes assure repayment by providing a lien against the land within the district which is delinquent in paying assessments, on all unpaid assessments (whether delinquent or not), and on all money coming into the district fund. §7-12-2184(1), MCA. If the loan is not repaid, the county has the right to foreclose against the land. §7-12-2184(2), MCA. In Hansen v. City of Havre, 112 Mont. 207, 114 P.2d 1053 (1941), the court construed the SID revolving fund statutes and said, "the moneys in the revolving fund are not chargeable with the payment of the bonds, the moneys used for that purpose from the revolving fund are merely loaned by the revolving fund to the district fund." 114 P.2d at 1057. The revolving fund was supposed to cover temporary shortfalls in assessments. It was not a guarantee of partial payment to the bondholders.

C. SID and RSID Bonds are Special Obligations.

SID and RSID bonds and interest are repaid from assessments on the land that is benefitted. Gagnon v. City of Butte, 75 Mont. 297, 243 P. 1085, 1089 (1926). The bondholders have no claim against anyone or anything other than the land. The statutes say that and so do the bonds that are issued. The assessments are not a personal obligation to the landowner. 70A Am.Jur.2d, Special or Local Assessments §189. The bonds are not obligations of the city or county. Griffith v. Opinion Publishing Co., 114 Mont. 502, 138 P.2d 580, 588 (1943). Even when a county or city makes loans to the revolving fund, the loans must be repaid from assessments against the land or by foreclosing the land. Over and over again, the statutes tell us that special improvement bonds are to be paid by the land benefitted.

RSID and SID bonds are "special" obligations. They are not "general" obligations of the city or county. They are similar to a "revenue bond" where payment comes from a specific project. A special obligation bond is "payable from the collection of a special tax or assessment which is a lien against the real estate and is not a general obligation of the county." §7-12-2170, MCA (repealed 1990) (emphasis added). Special obligation bonds do not have the credit of the county backing them. Stanley v. Jeffries, 284 P.2d at 138. Special obligation bonds are not part of the county's indebtedness. State ex rel. Truax v. Town of Lima, 121 Mont. 152, 193 P.2d 1008, 1010 (1948), citing State ex rel. Mueller v. Todd, 114 Mont. 35, 132 P.2d 154 (1942).

When the legislature passed and amended the statutes governing RSID's and SID's, it stated and restated its intention that the bonds would not be general obligations of cities or counties, but would be "special" and limited obligations. The legislature's purpose in defining the

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bonds as "special obligations" is not hard to discern. Since special obligation bonds are not part of the county's or city's indebtedness, they are not subject to the statutory limits on public indebtedness, and they need not be approved by a vote of the electorate. §7-7-2101(2), MCA.

D. The Bonds Cannot be Treated as General Obligations Unless Procedural Requirements and Limitations are Observed.

If the bonds were general obligations of the county, then the county would have to observe all of the procedural requirements associated with county indebtedness and expenditures. The county would have to observe all of the procedures that protect voters from being taxed unnecessarily and without their consent. Cities and counties have not observed those procedures because the RSID and SID bond statutes have not required it. Dorsey & Whitney argues that the procedural requirements are unnecessary because these bonds have been labeled "special" obligations, even though it interprets the statutes to require cities and counties to pay general fund revenues to satisfy the bond obligations.

E. Dorsey & Whitney Argue that Under the Current Law, the County's or City's Obligation is Unlimited in Time and Amount.

An unlimited obligation of the type urged by Dorsey & Whitney would exceed the statutory limitation on county indebtedness or liability. Sections 7-7-2101(2) and 2102, MCA, make void any county "indebtedness or liability for any single purpose to an amount exceeding $500,000" unless it is approved by a majority of the electors. That limitation was imposed pursuant to a directive in Article VIII, Section 10, of the 1972 Constitution. Many years ago the Montana Supreme Court explained the reasons for such limitations:

> Knowing the tendency of governments to run in debt, to incur liabilities, and thereby to affect the faith and credit of the state in matters of finance, thus imposing additional burdens upon the taxpaying public, the phrases of the Constitution place positive limitations upon the power of the Legislative Assembly to incur a debt or impose a liability upon the state beyond the limit prescribed, without referring the proposition to the electorate for its approval.

Diedrichs v. State Highway Commission, 89 Mont. 205, 211, 296 P. 1033, 1035 (1931), quoted in Burlington Northern Inc. v. Richland County, 162 Mont. 364, 512 P.2d 707, 709 (1973). The Montana Constitution commands the legislature to impose positive limitations on the county for the same reasons. The statutes authorizing RSID revolving funds must be read in a way that is consistent with the limits on the county's power to impose general taxes and incur debt. Dorsey & Whitney's interpretation of those statutes was not consistent with those limitations. That is a part of the reason that Judge Honzel rejected Dorsey & Whitney's argument.

II. JUDGE HONZEL'S DECISION IS REASONABLE AND WORKABLE.

Ms. Ellingson has said that Judge Honzel did "not specify the bases for [his] holding" that Carbon County should not be required to make further loans from its revolving fund to the district fund. Her statement is incorrect. Judge Honzel wrote an 18 page memorandum and order carefully articulating the facts, the relevant authority, and his conclusions. Some of the points he made are worth emphasizing here.

First, he identified the problem with Dorsey & Whitney's interpretation of the RSID statutes. That interpretation would create a potentially unlimited obligation for the county:

> The problem . . . is obvious: The obligation that the County Commissioners continue to make loans from the revolving fund to the district funds and continue to levy a tax to the revolving fund could potentially go on indefinitely because the interest and principal on the bonds might never be fully paid. That appears to be the situation here. The funds currently being generated are not sufficient to pay even the interest on the bonds and there does not appear to be any reasonable prospect that this situation will change.

(Memorandum and Order, p. 9 and 10) Of course, that problem is not unique to Carbon County. It could occur anywhere that these bonds are used to finance improvements in a raw land subdivision that fails because of a decline in real estate prices. (Incidentally, until 1985, special improvement districts were supposed to be created only in a "thickly populated locality," §7-12-2102, MCA (1983), but bond counsel never found that requirement to be a legal impediment to issuing bonds for a raw land subdivision.)

Second, Judge Honzel analyzed the Montana Supreme Court cases that address the revolving fund, including Hansen v. City of Havre, upon which Ms. Ellingson relies. Judge Honzel found that the Supreme Court had never addressed the applicability of the debt limitation statutes in a situation where the special improvement district was insolvent. He held that Hansen did not address the question of the city's obligation to continue making loans to the improvement district when the district had defaulted on the loans and the amount that could be loaned from the revolving fund was not sufficient to cure the default. He did, however, find authority in Hansen and other cases holding that any loss suffered on special obligation bonds should fall "upon the holders of the bonds and warrants, and not upon the city." (Memorandum and Order, p. 14, quoting Stanley v. Jeffries, 86 Mont. at 133, 284 P. at 139)

Additionally, Judge Honzel found that the debt limitation statutes do apply to the revolving fund obligation, and that the county could not be required to pay more than the statutory debt limit unless the obligation was approved by a vote of the electorate. (Memorandum and Order, p. 16) Since Carbon County had already advanced funds in excess of the applicable debt limitation, and Carbon County's taxpayers had never approved any further obligation, Judge Honzel held that the county had no further obligation to fund the revolving fund.

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Thus, Judge Honzel held that any obligation imposed by the revolving fund was also limited by the county's debt limitations. That ruling is far from surprising. Courts have always held that statutes must be construed so that each has some effect. His decision does not create any startling new uncertainty, and it does not impose any unreasonable limitations on the revolving fund obligation.

III. SENATE BILL 426 IMPLEMENTS QUESTIONABLE PUBLIC POLICY WITHOUT ELIMINATING ALL UNCERTAINTIES CONCERNING REVOLVING FUND OBLIGATION.

Ms. Ellingson's stated purpose for supporting this bill is to resolve uncertainties as to the nature and extent of the revolving fund pledge. She disavows any intent to make policy changes. In fact, the bill does just the opposite, it does make policy decisions, and fails to resolve all uncertainties.

Senate Bill 426 attempts to establish policy that counties can and should pledge general revenues to repay a portion of special obligation bonds. It requires the county or city to make payments to the revolving fund even when there is no hope that payments can be recovered by foreclosing against the land. It holds that taxpayers of a city or county, who have never had an opportunity to approve of the obligation and received no benefit or only a limited benefit from it, should be required to pay bondholders, who made voluntary investments after receiving prospectuses or other disclosure statements that should fully disclose the risks associated with the investment. Senate Bill 426 would eliminate a county's ability to accelerate the RSID assessments, and stop the drain on its general fund when there has been a default. Instead, SB 426 would force the county to continue depositing general revenues into the revolving fund, until the term of the bonds expired, even if there is no other source of revenue paying the bonds.

Carbon County respectfully submits that it is not sound public policy to impose those kinds of burdens on taxpayers, unless the taxpayers have agreed to undertake them by voting to approve the bonds. And, if we are going to impose those obligations on taxpayers, we should not try to deceive the voters by calling the bonds "special" obligations, and by calling the revenue pledges "loans." The bonds should be called "limited general obligations." The revolving fund should be called a guarantee fund. The "loans" should be called "pledged revenues."

Carbon County also submits that Senate Bill 426 suffers constitutional defects. Carbon County argued before Judge Honzel that the RSID statutes could not be interpreted as Dorsey & Whitney suggested because such an interpretation would be unconstitutional. Judge Honzel did not reach the constitutional question because he rejected Dorsey & Whitney's interpretation of the statutes. However, Senate Bill 426 essentially codifies the statutory interpretation that Dorsey & Whitney proposed to Judge Honzel. If Senate Bill 426 is adopted, the question of its constitutionality will almost certainly arise.

Twice since 1986, the Montana Supreme Court has addressed cases involving bond obligations that were contingent upon the decision of some private party to fulfill or not to fulfill its contractual

obligations. White v. State, 233 Mont. 81, 759 P.2d 971 (1988); Hollow v. State, 222 Mont. 478, 723 P.2d 227 (1986). In both cases, the court held that a government's liability cannot depend upon the acts of private parties. The court said that a "pledge" of state revenues "without the future action of the legislature" violated the Montana Constitution. The legislature was forbidden from guaranteeing bonds, even though the legislature could undertake a "moral obligation" to pay the bonds. The legislature could not delegate, surrender, or contract away its control of the public purse. The court summed up with these words:

> What we do not and cannot condone is the direct use of tax monies by legislative provision which in effect directly pledges the credit of the state to secure the bonds involved in this case.

White, 729 P.2d at 974, quoting Hollow, 723 P.2d at 232. Senate Bill 426 would allow a county or city to pledge its credit directly to secure bonds to benefit private business ventures. The Supreme Court's decisions strongly suggest that such a pledge is unconstitutional. Mont. Const. Article V, Section 11(5), Article VIII, Section 1; see also Article VIII, Section 2.

CONCLUSION

Judge Honzel's decision has not created an emergency that requires an immediate legislative response. He carefully considered all of the relevant statutes and made a thoughtful and careful decision that places reasonable limits on a county's obligation to the revolving fund. Before the legislature modifies his decision, it should carefully consider all of the issues that Judge Honzel considered, as well as approaches that other states have taken in addressing these types of issues. Such a study cannot be accomplished in the heat of this session, and probably should be addressed by an interim committee. Carbon County would be pleased to participate in and cooperate with an interim study. Carbon County urges the defeat of Senate Bill 426.

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OF COUNSEL

March 4, 1993

Mr. Anthony W. Kendall
County Attorney
Carbon County
P. O. Box 810
Red Lodge, Montana 59068

SENATE TAXATION
EXHIBIT NO. 11
DATE 3-17-93
BILL NO. SB 426

Re: Senate Bill 426

Dear Tony:

After you had advised at the meeting that you had with MACO that John DeVore from Missoula indicated Missoula County has approximately $3 million worth of RSID's they wanted to sell and the City had another $3 million that they were interested in selling, I contacted Scott Peterson, Vice President for Northwest Investment Services, Inc. out of Denver. Scott Peterson was a bondholder representative in the Lockwood industrial revenue bond issue and the individual who I had contacted earlier about the Carbon County case. I told Scott about our conversation and that there might be a possibility of picking up $3 million worth of bonds from the County and $3 million worth from the City of Missoula.

He contacted them and reported back to me that he talked to John DeVore, who was very familiar with Senate Bill 426. John DeVore told him that Gordan Morris and MACO were not going to support the bill and they were to remain neutral. He indicated that Missoula strongly supported Senate Bill 426 and he feels it is necessary in order to sell our RSID bonds in the future. Scott said that he had heard there were bonds that the Missoula County had and wanted to sell. John DeVore indicated that they did not have any RSID's presently in the mill and there was nothing for him to consider. Scott Peterson indicated he would be glad to come up and review those and possibly buy those bonds. DeVore indicated that they had nothing to sell and further stated they had no inclination in talking to them about bonds because he didn't want to do anything that would tick off the underwriters or bond counsel.

Scott then spoke to Chuck Sterns of the City whom he also thought was a financial director there. Mr. Sterns also indicated he did not have anything in the mill at that time. He said they were working on a deal to sell some bonds in the future, but that was maybe three to five months down the road and as far as anything being pending now, there was nothing. He did indicate the City sold $36,000 worth of SID bonds in the last week with no bond opinion and they were bought by local people.

Scott's impression was that John DeVore felt that the Counties would be neutralized and that the cities may be persuaded to take a stand in support of the bill, and as a result of that, it may be very difficult to defeat this legislation. John DeVore's assessment of Carbon County's position is as follows: He feels Carbon County entered into covenants, utilized the revolving fund, and welshed on their agreement. He feels that it is necessary and important that no other cities or counties be able to welch on their agreements and revolving funds, because that gives RSID's or SID's a bad name and they will not be able to use those in the future. John DeVore does say that he would support an amendment to the bill which would prohibit the bill from being in any way retroactive to the Carbon County situation.

John DeVore and Chuck Sterns both indicated they were going to support Senate Bill 426 and indicated that they were opposed to the position taken by Carbon County. I told Scott that I would hope that other counties may approach their firm in the future because I felt it was necessary to get some new blood in the State of Montana with regard to bonds and issuing bond opinions, etc. Scott told me he got the impression that even if he was able to look at the bonds in Missoula, they would be uncomfortable allowing him to get another bond opinion and would want him to use Dorsey Whitney. I told Scott that if anything developed in the future and if other counties may be interested, I would be glad to give them his name.

Along this line, if Mona or any of the other commissioners know of any future RSID's, they may wish to contact Scott Peterson. His number is 1-800-444-4823 and he is the vice president of Northwest Investment Services, Inc. in Denver.

Sincerely,

Ward Swanser

WS:sfm
Enclosure

SENATE TAXATION
EXHIBIT NO. 12
DATE 3-17-93
BILL NO. SB 426

DHES TESTIMONY ON SB 426

Presented by Scott Anderson

My name is Scott Anderson. I am the manager of the Municipal Wastewater Assistance program in the Water Quality Bureau of the MDHES. I am testifying in support of SB 426. My program provides loan and grant assistance to communities to build wastewater treatment and collection systems. While for many years we administered a federally assisted grant program, this program is being phased out and is being replaced with the Montana Wastewater Revolving Loan program. This new program loans money to Montana communities at a lower than market interest rate with all principal payments going back into the program to be used for new loans. The program has been designed to be a perpetual source of financial assistance for water pollution control projects.

The program is capitalized with both federal funds and state funds. Federal funds are provided in the form of a capitalization grant which our department receives from the EPA. At present, we are authorized to receive about 40 million in federal funds. For each federal dollar we utilize, the state must provide a 20% match. The 1989 legislature provided us with the authority to raise this match through the issuance of state backed general obligation bonds. Interest payments received on the loans made to communities are used to pay back the bondholders for the state general obligation bonds. We designed a very conservative program relying on the

credit worthiness of the borrowers to secure these loans to avoid any defaults which could put the general fund at risk. Our loans to communities are backed by bonds which they issue to us in a manner very similar to selling these bonds on the market. In the case of revenue bonds we require reserves to be established and 125% coverage to secure the loans. On special improvement district bonds, we believe the revolving fund is a key aspect of the loan which insures that repayments will be made on a timely basis. The risk of funding a project without this security may be too great for this program to consider SID loans in the future.

About one half of all of our loans made to date are secured through a special improvement district bond. This method of financing seems to be appropriately used where a select group of users benefits from a project which is very common when we build new sewage collection systems. Missoula, for example, used special improvement district financing extensively to build sewers for the south Missoula area. The largest unsewered area in the state, Evergreen, is counting on a 3.6 million dollar SID backed loan from us this spring to finish the financing of a project which has already started construction.

We believe SB 426 will insure that the revolving fund can be counted on as security for our loans. Our financial consultants have advised us that special improvement district loans without the security of the revolving fund will greatly increase the risk of these loans. In the event that this legislation does not pass, we

believe it would be necessary to cease making loans backed by SID's until we have been instructed by the legislature that the state should assume this higher degree of risk. If eventually we find that we cannot make loans backed by SID's, many key infrastructure projects needed to resolve known public health or environmental problems will not be built.

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KIT LAHTI

MONTANA FIRST JUDICIAL DISTRICT COURT

COUNTY OF LEWIS AND CLARK

* * * * * * * * * * * * * * * * * * * *)
)
CARBON COUNTY,)
)
Plaintiff,) Cause No. CDV-90-1196
)
vs.)
)
DAIN BOSWORTH, INCORPORATED, a)
Delaware corporation; D.A. DAVIDSON)
& CO., INC., a Montana corporation;)
PIPER, JAFFRAY & HOPWOOD, INC., a) **MEMORANDUM AND ORDER**
Delaware corporation; LEANOR)
REICHMUTH, MAX C. CLAWITER, GRACE L.)
CLAWITER, MELBA C. MERRILL, BETTIE)
LOUISE FORSMAN, ROWAN A. GREY, VIVA)
G. GREY, LOUIS F. KINNEY, LLOYD H.)
ROGNEY, DOROTHY J. ROGNEY, VAUGHN R.)
CHADBOURNE, LAVINA CHADBOURNE,)
GEORGIAN M. ALLARD, Trustee, DOROTHY)
BOESE, HARRY R. ZITTO, APRIL L.)
ZITTO, AGNES J. QUANBECK, JOHN R.)
GROVER, CAROL J. GROVER, LAWRENCE M.)
ABER, GLADYS V. ABER, KAREN T.)
DOOLEN, FRANCES M. MACKEY, ROBERT P.)
MAYNARD, KATHRYN W. MAYNARD, EDITH)
GRONHOVD, GEORGIANA ALLARD, L. P.)
ANDERSON, GENEVIEVE BUCHANAN, DANIEL)
J. WILLIAMS, JOYCE E. WILLIAMS, JOHN)
FADHL, Trustee, FLOYD C. CLAWITER,)
LORRAINE CLAWITER, MARGARET A.)

DAVISON, ROBERT B. DAVISON, SHIRLEY E. VOYTA, LETHA M. PETERSON, PLANT & CO., DAVID BLUMFIELD, VIOLET A. FRENDER, ARTHUR W. SCHMIDT, LUCILLE B. HULL, EDWARD J. YIRSA, SHIRLEY A. YIRSA, HARLEY C. HURD, Trustee, MARIE M. HINCHCLIFF, REX EAGER, FRANCES EAGER, NILE KEISTER, MARION T. HEDEGAARD, LORA S. HEDEGAARD, FRED M. MATTSON, CLEO BLATTER, OTHILDA BLATTER, SR., PATTY SUE RIEEKE BOZA, HARRIET J. MATTSON, HAROLD G. WINDEN, CURTIS K. JOHNSON, KAREN A. JOHNSON, GEORGE F. PERKINS, MAMIE WYNN DOWNS, FENNA VG KLINGBERG, GEORGE H. KLINGBERG, JOSEPHINE F. RAICH, LILIAS N. LINTON, WILLIAM A. LINTON, SAMUEL J. OHNSTAD, DELARY ULGENES, FLORENCE ULGENES, LOUIS D. SATHER, PATRICIA A. SATHER, DORIS R. GRAMS, COOPER CITY REALTY CO., DOROTHY E. VIOLETT, ANNE C. FEVER, ARLEY W. HELVIK, ELAYNE M. HELVIK, STANLEY R. MAYRA, JUNE M. MAYRA, BURTON G. KINYON, ETTA M. KINYON, MARGARET QUINN, KEITH P. JOHNSON, JUNE BROWN, MARY E. HALE, ROBERT PRIGGE, FAVERO & FAVERO, a partnership, TEDDY T. SULLIVAN, NORMAN E. HANSON, JUNE I. SULLIVAN, ALFRED E. PAULSON, THELMA M. PAULSON, HUBERT V. GOGGINS, ALICE VIRGINIA GOGGINS, DOROTHY L. JORDAN, LINDA A. EICHNER, CHESTER M. ROSS, SANDRA A. KROHNE, CAROL J. MALLARD, JOSEPH L. MALLARD, DR. SAM ESPELAND, EDNA M. EGGEBRECHT, DOROTHY J. PHILLIPS, ROBERT J. HARPSTER, ADA R. HARPSTER, WILLIAM J. HYSLOP, EILEEN F. HYSLOP, LARRY LLOYD, DARLENE LLOYD, SOD & COMPANY, PAINE WEBBER, INC., GERALD HOFFMAN, GLADYS M. HOFFMAN, LAWRENCE BOESE, SIDNEY ALLARD, GERALD W. KENSLER, ANITA KENSLER, SALKELD & CO., DEAN WITTER REYNOLDS, INC., PAMELA L. LENTA, ALMA KEISTER, ALVERT J. LAMBRACHT, JOHN SHERMAN, BYRNECE

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SHERMAN, BEN B. HILL, HELEN N. HILL, DOUGLAS GRIEVE, CLIFFORD D. HOSHAW, RALPH S. POTTS, JESIE L. POTTS, MARY T. MALYEVAC, MAMIE S. SAVIK, PHILIP J. DEZORT, BETTY J. PYPER, LLOYD N. AUSTAD, VIRGINIA N. AUSTAD, CHARLES HINDERAGER, ALICE HINDERAGER, HELEN K. SAVAGE, FRANK BUTTREY, Trustee, GEORGE E. SOPES, JACK R. DAVIS, PATRICIA H. DAVIS, RUTH B. WILLIAMSON, DR. ROBERT R. WHITING, JR., CHARLES O. KEENE, JEAN F. BARRETT, MELVIN H. SCHLESINGER, EARL K. POPPLER, EILEEN POGGI, KEEP & CO., EMSEG & CO., GERALD H. DOTY, PAROOA ANN DOTY, LILY C. BIELBY, CAROLYN JEAN TOULOUSE, DOUGLAS V. TOULOUSE, JAMES G. LARSON, GALLET & COMPANY, JOSE JOHNSON, JEAN JOHNSON, MARION F. VOLKMAN, Trustee, EDWARD H. MEYER, CAROLINE M. MEYER, SHIRLEY E. HICKS, HERSCHELL D. HURD, LILLIAN M. HURD, and DONALDSON, LUFKIN & JENRETTE,

Defendants,

D. A. DAVIDSON & CO., KAREN T. DOOLEN, and FRANK and MARGO KELLEY, as representatives of the Bondholder Class,

Defendants and Applicants,

vs.

CARBON COUNTY,

Plaintiff and Respondent,

DON TAYLOR, MONA L. NUTTING and JOHN PRINKKI,

Respondents.

* * * * * * * * * * * * * * * * * * * *

Before the Court are the cross motions of the parties for summary judgment. Also before the Court are Defendants' motions in limine.

BACKGROUND

In April of 1984, Plaintiff Carbon County (the County), pursuant to a petition from a real estate development group, created two Rural Special Improvement Districts (RSIDs) for a subdivision and golf course near Red Lodge, Montana. RSID No. 8 was authorized to construct improvements totalling $2,440,000 to distribute essential services in the subdivision. The improvements authorized for RSID No. 9, which was to deliver the services, totalled $1,025,000.

The County initially attempted to sell RSID bonds on its own to pay for these improvements. That effort was fruitless. Subsequently, the County successfully negotiated to sell the bonds to Defendants Dain Bosworth, Inc., D.A. Davidson & Co., and Piper, Jaffray & Hopwood, Inc. (the Underwriters). RSID Nos. 8 and 9 were then recreated on August 30, 1984, and the County Commissioners executed bond resolutions. Next, the special obligation bonds were issued.

The RSID bonds are "special" as opposed to "general" obligations of the County. They are payable from assessments made by the County on property owners within the RSID. Additionally, in the bond resolutions the County agreed to create a

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revolving fund which would loan money to the bond fund in order to ensure the bond payments were made in a timely fashion. The County covenanted to loan the revolving fund monies from its general fund or from a tax levy to the maximum amount allowed by statute.

The mechanics of the bond process are spelled out in the applicable statutes, Sections 7-12-2101 to 7-12-2206, MCA.

The Underwriters in turn resold the bonds to numerous investors (the Bondholders). Money from the bonds was used to construct the improvements, such as a sewer and water infrastructure, in the planned subdivision.

All did not go as planned for the sale of lots in the subdivision. In 1986 and 1987, the Bondholders were paid in full, mainly with monies from letters of credit from the developers. Eventually, the majority of the assessments were not paid and revenues from the assessments were inadequate to cover principal and significant portions of the interest payments.

For the period 1988-90, the County levied general taxes that went into the revolving fund and from there into the RSID funds. Since then, however, the County has ceased loaning money to the district funds, continuing only to make levies for the revolving fund.

The County commenced this action on December 31, 1990,

seeking a judgment declaring its obligations to the Underwriters and the Bondholders. The County asked this Court to determine whether the County has a further obligation to levy taxes for the revolving fund or to loan monies to the RSID funds and whether the County has an obligation to loan the revolving fund any monies raised from general taxes to date. The County also sought a declaratory judgment that it can end its obligations to the Bondholders by accelerating all assessments against delinquent lots in the RSIDs; foreclosing its lien against the lots and either conveying them to the Bondholders or selling them and applying the proceeds, first, to repaying the loans to the revolving fund and, second, to the bond payments.

The Underwriters seek a declaratory judgment that the RSID statutes are constitutional and enforceable as to the County. They have also requested this Court issue an alternative writ of mandate commanding the County Commissioners to fund the RSID revolving fund either from the County's general fund or from a special tax. The Underwriters have asked that the County officials then be ordered to transfer these monies to the district funds to cover future and past due payments of interest and principal.

The Underwriters have also filed two motions in limine. The first seeks to exclude evidence relating to an agreement between the Underwriters and the real estate

development group to provide further security. The second seeks to exclude evidence of the current market value of real property in RSID Nos. 8 and 9.

ISSUE

The Court frames the issue as follows: Whether Carbon County is required to continue loaning money to the RSIDs from the revolving fund created pursuant to Section 7-12-2181, MCA, where the districts are in effect insolvent and unable to make payments toward the retirement of the bonds and where the amount of money which can be loaned to the district funds from the revolving fund is insufficient to pay the bonds and the interest thereon.

DISCUSSION

The RSID revolving fund is authorized by Section 7-12-2181, MCA. The revolving fund is funded by loans from the County's general fund and by a tax on all the taxable property in the County "as shall be necessary to meet the financial requirements of such fund." Section 7-12-2182(1)(b), MCA. The tax, however, "may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds . . . ." Id.

In the event there is either no money or insufficient money in the district fund with which to pay the bonds and the interest, "an amount sufficient to make up the deficiency may,

by order of the board of county commissioners, be loaned by the revolving fund to such district fund." Section 7-12-2183, MCA. In the case of special improvement districts, the Montana Supreme Court has held that "may" means "must." Hansen v. City of Havre, 112 Mont. 207, 217, 114 P.2d 1053, 1059 (1941). Thus, once a revolving fund is created, the County Commissioners must fund it and must make loans to the district funds when necessary.

Whenever a loan is made to an RSID fund from the revolving fund, the revolving fund obtains a lien "on the land within the district which is delinquent in the payment of its assessments and on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon . . . ." Section 7-12-2184(1), MCA.

Under Section 7-12-2185, MCA, the County Commissioners may, as part of the bond issue, agree to annually authorize loans from the revolving fund to the district funds to make good any deficiency. They may also agree to provide funds for the revolving fund by annually making such tax levy as is authorized by Section 7-12-2182, MCA. In this case, the County Commissioners did enter into such an agreement.

Section 7-12-2185(2), MCA, specifically provides:

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"The undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered or any interest thereon remain unpaid." Furthermore, Section 7-12-2181, MCA, provides: "Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged."

The language of these statutes is clear that the County is required to continue funding the revolving fund and to continue making loans to the district funds so long as the bonds and interest remain unpaid. This is the same conclusion reached by the Attorney General with respect to special improvement district bonds issued by the city of Columbia Falls. 42 Op. Att'y Gen. 82 (1988). It is also the same conclusion reached by United States Bankruptcy Judge Alfred C. Hagan in his memorandum of decision issued July 31, 1992. In re: City of Columbia Falls, Montana, Special Improvement District No. 25, Case No. 90-31775-9; In re: City of Columbia Falls, Montana, Special Improvement District No. 26, Case No. 91-31360-9; In re: City of Columbia Falls, Montana Special Improvement District No. 28, Case No. 91-31355-9.

The problem with this result is obvious: The obligation that the County Commissioners continue to make loans from the revolving fund to the district funds and continue to levy a

tax to fund the revolving fund could potentially go on indefinitely because the interest and principal on the bonds might never be fully paid. That appears to be the situation here. The funds currently being generated are not sufficient to pay even the interest on the bonds and there does not appear to be any reasonable prospect that this situation will change.

Defendants have moved in limine to exclude the information submitted by the County on the value of the lots in the districts which are delinquent on their assessments. Fair market value is usually a question of fact. It can also change from time to time based on market conditions. However, given the amount owing for principal and interest, it is highly unlikely that the value of the property would ever be sufficient to reduce the amount owing so that the bonds could in fact be paid in full. In addition, as loans are made from the revolving fund, the districts are incurring additional debt.

Article VIII, Section 10, of the Montana Constitution, states: "The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities."

Section 7-7-2101(2), MCA, as it was in effect in 1984, provided that no county could incur indebtedness or liability for any single purpose in an amount exceeding $150,000 without the approval of a majority of the electors of the county. In 1985, the cap was raised to $500,000. Chapter 584, Laws 1985.

This section was not addressed by the Attorney General in his opinion on the Columbia Falls bonds. Columbia Falls did not bring an action in state district court to challenge the Attorney General's opinion. Rather, after the Attorney General issued his opinion, Columbia Falls filed an action in bankruptcy court.

Although in its memorandum the bankruptcy court stated that the city of Columbia Falls was obligated under Montana law to continue to make loans from the revolving fund to the district fund, the court held that the obligation of the district could be discharged in bankruptcy. The bankruptcy court further held that since the city was not a guarantor of the bonds, the city's obligation to continue to make loans was terminated because of the district's discharge in bankruptcy.

Unlike cities, which are municipal corporations, counties are political subdivisions and thus cannot seek protection in bankruptcy court. In this regard, Section 7-7-4111, MCA, specifically provides that municipal corporations can seek relief through bankruptcy.

While the Montana Supreme Court has discussed debt limitation statutes in cases involving the validity of special improvement district bonds issued by a city, the court has not addressed the applicability of a debt limitation statute such as Section 7-7-2101(2), MCA, where the special improvement district

is in fact insolvent.

Stanley v. Jeffries, 86 Mont. 114, 284 P. 134 (1929), involved the constitutionality of Chapter 24, Laws 1929, which authorized cities to set up revolving funds similar to the one at issue here. In Stanley, the plaintiffs sought to enjoin the county treasurer from collecting a tax levied by the city pursuant to that law. In upholding the law, the court stated:

> When, therefore, the legislature provided that, as to special improvement districts created in the future, a fund shall be created to insure the prompt payment of bonds and warrants issued in payment of such improvements, it but modified the special improvement district law to impose upon the general public, within the municipality, a conditional obligation to pay a small portion of the cost of erecting the public improvement, whereas it might have, lawfully, imposed a much greater burden upon the municipality.

Id. at 131, 284 P. at 138-39.

The court went on to note, however, that: "The question as to whether or not this enactment will trench upon the constitutional limitation of indebtedness of the city is not here presented." Id. at 132, 284 P. at 139.

In Hansen, plaintiff sought to enjoin the city of Havre from carrying out certain special improvement district projects to be financed by the sale of special improvement district bonds. In authorizing the sale of the bonds, the city council had agreed it would annually issue orders authorizing

EXHIBIT 10
DATE 3-17-93
SB-426

loans from the revolving fund to any of the four improvement districts involved in the project if there was a deficiency in the bond and interest accounts of the improvement district.

One of the questions raised was whether the proposed bonds would create an indebtedness of the city within the meaning of Article XIII, Section 6, of the 1889 Montana Constitution. The court held that the statute authorizing the city to create and utilize a revolving fund did not constitute an indebtedness of the city within the meaning of the constitutional provision. In its opinion, the court stated:

> [T]he moneys in the revolving fund are not chargeable with the payment of the bonds, but moneys used for that purpose from the revolving fund are merely loaned by the revolving fund to the district fund. . . . And when such a loan is made the revolving fund has a lien as security for the loan.

112 Mont. at 211, 114 P.2d at 1056.

The court went on:

> Hence, the possibility that part of the bonds may have to be paid with moneys obtained from the revolving fund which in turn is created by a tax levy on the property of the city does not create a city debt but is merely an arrangement whereby the city, through the revolving fund, loans money to the district, and for which it holds security in the form of a lien.

Id. at 212, 114 P.2d at 1056.

Then the court stated further:

> It should be pointed out that the proposed bonds are not obligations of the city, but

> of the special improvement district only, and payable only from the district fund. The revolving fund arrangement is merely a means whereby the district may borrow money to make up any deficiency.

Id.

Neither Hansen nor Stanley addresses the question of the city's obligation to continue making loans to the district when the district has defaulted on the bonds and the amount that can be loaned from the revolving fund is not sufficient to cure the default. In Stanley, however, the court did say: "[T]here is no duty or obligation resting upon the city other than to enforce and obey the provisions of the special improvement district laws; if this is done, and still a loss is suffered by reason of deficiencies in that law, the loss falls upon the holders of the bonds and warrants, and not upon the city." 86 Mont. at 133, 284 P. at 139.

In Griffin v. Opinion Publishing Co., 114 Mont. 502, 517, 138 P.2d 580, 588 (1943), the Montana Supreme Court also noted that special improvement district bonds are not the obligations of a city. Griffin was a libel case and did not involve loans from the city revolving fund. The statement of the court, however, reinforces the principle that it is the district, not the city, which is obligated to pay the bonds.

Requiring the County to continue to make loans from the revolving fund to the district funds when the districts are

not able to make the bond payments and probably will never be able to do so, could result in the county general fund being obligated to pay much more than the face amount of the bonds plus the interest as originally contemplated. Such a requirement would, in effect, transfer an obligation from the districts to the County since the only source of revenue to pay the bonds is the revolving fund. This goes completely against the intent of the legislation authorizing RSID bonds that it is the district and not the County which is responsible for the payment of the bonds.

In Garrett v. Swanton, 216 Cal. 220, 13 P.2d 725 (1932), the Supreme Court of California discussed this so-called "special fund" doctrine. The court quoted from one of its earlier decisions:

> The overwhelming weight of judicial opinion in this country is to the effect that bonds, or other forms of obligation issued by states, cities, counties, political subdivisions, or public agencies by legislative sanction and authority, if such particular bonds or obligations are secured by and payable only from the revenues to be realized from a particular utility or property, acquired with the proceeds of the bonds or obligations, do not constitute debts of the particular state, political subdivision, or public agency issuing them, within the definition of 'debts' as used in the constitutional provisions of the states having limitations as to the incurring of indebtedness.

Id. at ____, 13 P.2d at 729.

The court went on, however, to note that there are two well-established exceptions to the doctrine.

> [A]n indebtedness or liability is incurred when by the terms of the transaction a municipality is obligated directly or indirectly to feed the special fund from general or other revenues in addition to those arising solely from the specific improvement contemplated. It also seems to be well settled, as a second limitation to the doctrine, that a municipality incurs an indebtedness or liability when by the terms of the transaction the municipality may suffer a loss if the special fund is insufficient to pay the obligation incurred.

Id.

The instant case clearly falls within those well-recognized exceptions.

CONCLUSIONS

Based on the foregoing, the Court concludes that where it is established that an RSID has defaulted on its bonds, that the district is insolvent, and that there are insufficient funds in the revolving fund to make up the deficiency, a county should not be required to make any further loans from the revolving fund to the district fund.

Additional support for the Court's conclusion is found in a review of the statutes relating to the creation of RSIDs. Although notice of the resolution of intention to create an RSID must be published in a local newspaper, it is mailed only to persons owning real property within the proposed district. Section 7-12-2105(2), MCA. Under Section 7-12-2109, MCA, any

owner of property liable to be assessed for the proposed work may protest creation of the district. The only property owners who can be assessed are those owning property within the district. Section 7-12-2151, MCA. Those county taxpayers who do not own property within the proposed district (the external taxpayers) have no notice that if the district defaults on the bonds, they may be required to pay on those bonds indefinitely. Furthermore, unlike the property owner within the district, the external taxpayer is not given an opportunity to protest the creation of the district or the issuance of the bonds.

The Underwriters have also filed two motions in limine. The first seeks to exclude evidence relating to an agreement between the Underwriters and the real estate development group to provide further security. Because of the Court's conclusion that the County is not obligated to continue making loans from the revolving fund to the district funds where the districts are insolvent and unable to make payments toward the retirement of the bonds, it is not necessary to decide this motion.

In their second motion in limine, the Underwriters seek to exclude evidence of the current market value of real property in RSID Nos. 8 and 9. The basis of their motion is that such evidence is not relevant to the decision the Court has to make. The Underwriters would be correct that evidence of the

EXHIBIT 10
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SB-426

market value of the property would be irrelevant if the County were obligated to continue making loans from the revolving fund to the district funds regardless of the financial condition of the districts. Since, however, the Court has decided that the County can be relieved of its obligation to continue making loans from the revolving fund to the district funds, the evidence is relevant to a determination of whether the districts are in fact insolvent and unable to make payments toward the retirement of the bonds. Thus this motion is denied.

Based on the information submitted by the County, it appears that RSID Nos. 8 and 9 are in fact insolvent and unable to make payments toward the retirement of the bonds and that there are insufficient funds in the revolving fund to make up the deficiency. Therefore, the County should not be required to make further loans to the districts from the revolving fund.

For the foregoing reasons,

IT IS ORDERED:

1. The motion of Plaintiff Carbon County for summary judgment is GRANTED.

2. The motions of the Underwriters and of the Bond-holders for summary judgment are DENIED.

DATED this 3rd day of ~~January~~ February, 1993.

District Court Judge

pc: Ward Swanser/T. Thomas Singer
Anthony W. Kendall
Keith Strong/Bruce A. MacKenzie
Robert M. Murdo

CarbonCo.m&o

k

EXHIBIT 10
DATE 3-17-93
SB-426

MISSOULA
FINANCE/CITY CLERK OFFICE
435 RYMAN ST. • MISSOULA, MT 59802-4297 • (406) 523-4700
FAX (406) 728-6690

FINANCE AND DEBT MANAGEMENT
BUDGET AND ANALYSIS
ACCOUNTING
CITY CLERK
UTILITY BILLING
RISK MANAGEMENT
GRANT ADMINISTRATION

EXHIBIT NO. 13
DATE 3-17-93
BILL NO SB 427

CHUCK STEARNS TESTIMONY ON SENATE BILL #427
March 17, 1993

The City of Missoula supports Senate Bill #427, to maintain the flexibility that many local governments believe they have under I-105 to adjust the various and separate property tax levies as long as the total property tax levy that existed in 1986 is not exceeded. However, it appears that there have been different interpretations of this issue by local governments and there is a request for an Attorney General Opinion, so the necessity of legislative clarification arises.

As original passed, the policy of I-105 was stated as is now codified in Section 15-10-401 (5) M.C.A. which states as follows:

> *The people of the state of Montana declare it is the policy of the state of Montana that* ***no further property tax increases be imposed*** *on property classes three, four, six, nine, twelve, and fourteen.* (Emphasis supplied)

In June of 1987, after the 1987 Legislature had passed Senator Gage's Senate Bill 71 which clarified and implemented Initiative 105, I wrote a letter to the Montana Department of Commerce's Bureau of Local Government Services and asked for a clarification by their auditors on one issue. The question was whether we could lower our SID Revolving Fund levy and increase other levies as long as the total City of Missoula levy did not exceed the 1986 level at which it was frozen. The Bureau Chief of the Local Government Services Bureau affirmed our interpretation in a July 17, 1987 letter and we have operated on the basis of that interpretation since 1987. Copies of my 1987 letter and the Department of Commerce response are attached to this testimony.

Perhaps it is easiest to show you in a table the effect of our interpretation. Our 1986 I-105 base levy, the 1987 levy, and our 1992 levy are shown below.

Category of levy	1986 levy	1987 levy	1992 levy
General Fund - All purpose levy	85.35	91.04	94.99
General Fund - Health levy	7.30	7.42	7.30
General Fund - Aging levy	0.76	0.76	0.69
SID REVOLVING FUND LEVY	**5.32**	**1.26**	**0.00**
Comprehensive Insurance levy	4.49	3.64	3.22
Employee Health Insurance levy	12.16	11.19	11.45
Police and Fire Pension levies	7.58	7.35	6.87
P.E.R.S. and Unemployment levies	3.76	3.39	3.28
1978 Pool/Fire G.O. Bond levy	1.12	1.30	0.78
1985 Refund G.O. Bond levy	1.92	1.33	0.60
Sub-totals	129.76	128.68	129.18
1989 G.O. Bond levy (after I-105)	n/a	n/a	2.73
Total levies	129.76	128.68	131.91

Essentially, our SID Revolving Fund levy has decreased since 1986 and the difference has been used to increase the general fund levy. However, as you can see from the chart, our 1992 sub-total levy of 129.18 mills, prior to including a post I-105 bond issue approved by the voters, is still below the 129.76 total in 1986, so taxpayers are not harmed in any manner and we have complied with the property tax freeze.

If you consider the reverse interpretation, it would be that as we no longer needed to levy property tax mills for the SID Revolving Fund, then our total property tax levy would have to decrease. Yet that interpretation is inconsistent with the policy of I-105 as shown above in Section 15-10-401 (5) M.C.A.

because I-105 was a tax freeze and no one ever testified that property tax levels should have to be decreased. Therefore, we believe that any interpretation contrary to the one we have used is contrary to the intent of I-105.

The ambiguity arises because of clauses in SB71 which were codified in Section 15-10-402 (2) and Section 15-10-412 (8) MCA which said that the limitation on taxes did not apply to levies for special improvement districts or the revolving funds that support RSID's and SID's. However, the main reason for these clauses was to be sure that I-105 did not impair previously issued SID and RSID bond covenants or I-105 would not pass constitutional muster for impairment of contracts. It was never intended to be construed as requiring decreases in local levies.

The primary reasons that we feel our interpretation is correct is because:

1. There was never any intent that I-105 should compel a decrease in property tax levies.
2. Taxpayers are not harmed by our interpretation because the I-105 frozen levy is not exceeded.
3. We have relied upon our good faith raising of the issue in 1987 when, before we applied our interpretation, we asked the state auditors for their position on our interpretation and our position was validated.
4. Article XI, Section 4 (2) states "The powers of incorporated cities and towns shall be liberally construed."

We encourage your support of SB427 which maintains the integrity of I-105 while still allowing local governments the flexibility that many thought we had under Senate Bill 71 in 1987.

MISSOULA FINANCE OFFICE
201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

BUDGET AND ANALYSIS
ACCOUNTING
CITY CLERK
UTILITY BILLING
RISK MANAGEMENT

June 23, 1987

Mr. Don Dooley
Department of Commerce
Bureau of Local Government Services
805 N. Main Street
Helena, MT 59601

Dear Don:

After discussion with City Attorney Jim Nugent, he suggested that I write and ask for written confirmation of an understanding that I had regarding mill levy limitations under Initiative 105 and State Law in order to avoid any problems with future auditors. The understanding that I have is based on my reading of Senate Bill 71 and a phone call between you and me earlier in June.

Basically, it is my understanding that, if the City has levied mills for the SID Revolving Fund in the past, but feels that, based on cash balance and future need for revolving fund loans, the SID Revolving levy can be decreased for FY88, then we can increase the other levies as long as we do not violate Initiative 105 as revised by Senate Bill 71 and other state law. Our example, (see enclosed page), is that we want to decrease the SID Revolving Fund levy and use those mills in the All Purpose and related levies. It is my understanding that we can levy in that manner as long as:

1) The City's total levy remains below the 1986 levy of 129.76 mills pursuant to Initiative 105 as revised by Senate Bill 71 of the 1987 legislature;

2) The budgeted expenditures, in any levy fund where the levy exceeds the Statutory mill levy limitations, do not increase more than 5%, pursuant to Section 15-7-122 MCA;

3) The City's total levy does not exceed the maximum certified millage as established by the County Assessor without following the proper procedures pursuant to Section 15-10-202 MCA through 15-10-208;

4) If the City decides to resume a higher SID Revolving Fund levy in the future, that any increase in the SID levy up to last year's 5.32 mills would have to come from decreases in the All Purpose and related levies in the future so as to meet the intent of I-105 and SB 71. If the City found it necessary to increase the SID Revolving Fund levy above the 1986 level of 5.32 mills, it could exceed the 1986 total levy of 129.76 mills for additional SID Revolving Fund levy pursuant to Senate Bill 71.

As you can see from the enclosure, based on my conversation with you, we do hope to proceed in this manner. Jim Nugent felt it prudent to confirm our telephone conversation and we would appreciate your response. Please call if there are any questions. Thank you.

Sincerely,

Chuck Stearns

Chuck Stearns
Fiscal Analyst

cc: Ron Preston, Finance Officer; Jim Nugent, City Attorney

2B)DOC-LEVY.BUD

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DATE 3-17-93

SB-427

FUND NUMBER	FUND	FYBE MILL LEVY (MILL VALUE = $44,750.00)	FYE7 MILL LEVY (MILL VALUE = 44,682.00	PERCENTAGE CHANGE FY87 - FYBE
A1010	GENERAL FUND - ALL PURPOSE LEVY	91.04	85.35	6.2
A1010	GENERAL FUND - HEALTH LEVY	7.42	7.30	1.6
A1010	GENERAL FUND - AGING LEVY	0.76	0.76	0.0
	GENERAL FUND SUB-TOTALS	99.22	93.41	6.2
A2260	MISSOULA REDEVELOPMENT AGENCY			
A2300	S.I.D. REVOLVING FUND	1.36	5.82	-76.8
A2320	COMPREHENSIVE INSURANCE LEVY	3.64	4.49	-18.9
A2371	EMPLOYEE HEALTH INSURANCE LEVY	11.19	12.16	-7.9
A2372	POLICE AND FIRE PENSION LEVIES	7.25	7.58	-3.0
A2373	F.E.R.S. AND UNEMPLOYMENT LEVIES	3.39	3.76	-9.8
A3040	1978 POOL/FIRE G.O. BOND DEBT SERVICE	1.30	1.12	16.0
A3060	1985 OPEN SPACE REFUNDING BONDS	1.33	1.92	-30.7
A5310	SEWER OPERATING BUDGET FUND			
	TOTALS FOR ALL FUNDS IN EXECUTIVE BUDGET	128.68	129.76	-0.8

SENATE TAXATION
EXHIBIT NO. 14
DATE 3-17-93
BILL NO. SB 427

TESTIMONY ON SB 427

On November 4, 1986, Montana voters passed Initiative 105. Initiative 105 was a measure intended to "freeze" property taxes at their existing level.

This seemingly straight forward initiative presented some interesting questions. For example, were local governments in jeopardy of default on their existing bonds as the result of the tax freeze initiative? How would local governments meet their current obligations relating to outstanding special improvement district bonds? Were voters prohibited from approving new general obligation bonds? In an effort to answer these and other questions, the 1987 Legislature passed SB 71 which was designed to revise and clarify I-105.

SB 71 was intended to provide local governments, schools and special districts the flexibility they needed to operate under the property tax limitation. There was general agreement that the freeze should not prohibit local jurisdictions from dealing with emergencies, paying judgments, issuing and securing bonds and allowing voters to approve higher levies. The bill provided a series of exemptions from the property tax freeze including Revolving Fund mill levies, levies approved by the voters, levies for general obligation bonds, among others. In addition, provisions were included in the bill to allow valuations to increase as the result of reappraisal, new construction, annexations, and to increase levies to offset declining valuations in excess of five percent in a given year.

Following the passage of this SB 71, a question arose concerning the interpretation of the

new law. Specifically, the question was "Were levies exempt from the freeze part of the 1986 base year when determining whether or not local governments were in compliance with I-105 and related laws?

In an effort to resolve this question, officials from the City of Missoula contacted the Department of Commerce, Local Government Services Bureau, for guidance. Montana state agencies, especially the Department of Commerce, are statutorily authorized and encouraged to provide assistance to Montana's local governments. A Department of Commerce official responded in writing that it was permissible to include the revolving fund levy in the tax base for 1986. The City of Missoula, City of Bozeman, and other Montana cities have strictly followed this interpretation and the intent of the law by limiting the number of mills to the amount imposed in 1986.

This past year, the Commerce Department's interpretation was questioned by officials in Missoula County. The issue was not able to be resolved between the city and the county and subsequently a request was made for an Attorney General's Opinion in August 1992. In September 1992, the Attorney General's Office released an unofficial draft opinion to interested parties for comment. The draft opinion ruled that levies exempt from the tax freeze could not be considered part of the tax base for 1986. Cities of Missoula, Bozeman, and the Montana League of Cities and Towns all provided additional information to the Attorney General's Office supporting the position that exempt levies could be considered part of the tax base for 1986 when determining compliance with I-105 and related laws. Marc Racicot, Attorney General at that time, did not rule on the question before leaving office.

The question has since been left for the current Attorney General, Joe Mazurek. To date, we have not received an opinion on the matter and Senate Bill 427 is an effort to resolve the issue.

Very simply, I-105 was not intended to reduce property taxes as time went along; it was intended to impose a ceiling on the actual dollar amount of property taxes, except in instances where the ceiling was allowed to be exceeded. To accept the argument that levies exempt from the freeze cannot be considered part of the tax base for 1986 would result in mandatory reductions in tax levies below the level authorized in 1986, when obligations for special improvement districts have been satisfied. This is clearly contrary to the intent of Initiative 105 and related legislation.

At no time during the House and Senate hearings on SB 71 was there an indication of any intent to make the property tax limit more restrictive. To the contrary, the preamble to the law says, "it is the intent of the legislature to enact provisions compatible with the will of the electors in limiting certain property taxes to 1986 levels while providing procedures to enable the Department of Revenue and local government units to function smoothly under such limits".

Passage of SB 427 will enable cities to levy the same total number of mills currently, as they did in 1986. This is consistent with the intent of I-105 and the legislation that implemented the initiative. Failure to pass SB 427 could result in mandatory reductions in local government tax levies, below 1986 levels, causing major reductions in services at the local level.

We strongly urge your support of SB 427.

EXHIBIT 14
DATE 3-17-93
SB - 427

KERIN & ASSOCIATES

219 East Mendenhall Street
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Phone 406/586-8407
Fax 406/586-3745

consulting engineers/planners

RICHARD T. KERIN, P.E.
prinicpal

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Phone 406/222-8121
Fax 406/222-8121

March 11, 1993

Mr. Gregory Petesch
Legislative Council
Room 138
State Capitol
Helena, Montana 59620

RE: Senate Bill No. 426 Regarding:
Rural Improvement Districts/Special Improvement Districts

Dear Mr. Petesch:

I am a native Montanan, registered professional engineer and owner of a civil/structural engineering firm based in Bozeman with a company branch office in Livingston, Montana. I have been actively doing business with many of the municipalities and counties in Southwestern Montana in the field of municipal infrastructure planning and design for the past 14 years. A significant portion of our work load is the engineering associated with Rural Improvement Districts with Gallatin and Park Counties and Special Improvement Districts in the municipalities of Belgrade, Bozeman, and Livingston. These special districts represent 20-25 percent of our annual workload.

These districts are the only mechanism I know of whereby local neighborhoods can improve themselves at a reasonable annual cost and favorable interest rate. We are currently involved in the planning and contract administration on the following districts in our area:

KERIN & ASSOCIATES
RIDS/SIDS

ITEM#	PROJECT DESCRIPTION	ESTIMATED COST	ESTIMATED LINEAL FEET OF STREET IMPROVEMENT
1	City of Livingston Special Improvement District No. 175	$150,000	2,000
2	City of Bozeman Paving SID - West Babcock*	$250,000	1,500
3	Gallatin County Paving SID - Outlaw Country	$235,000	15,000
4	Gallatin County Paving SID No. 361 Ranch Subdivision	$187,200	14,000

5	Royal Arabian Subdivision - Gallatin County	$176,500	7,500
6	City of Belgrade SID No. 75 - Armstrong Paving District	$205,000	5,000
7	City of Belgrade SID No. 74 - Caldwell Subdivision Paving SID	$190,000	4,500
8	City of Belgrade Paving & Utility SID No. 73 Belgrade School District/Beaumont Greens	$400,000	3,500
9	South 8th Street SID - City of Livingston - Street Paving SID	$75,000	900

These are just the active ones we have in file and underway. There are others under consideration too. Other firms in the area are working on many more. So you can see that these improvement districts represent a substantial part of not only our local economy, Gallatin and Park County areas, but more importantly they represent significant improvements to local neighborhoods as well. I ask that you place this letter into the public record in support of the passage of Senate Bill No. 426. Anything I can do to help you with this matter, I would be glad to do so. I would be in Helena to testify, but unfortunately will be gone the week of March 17.

Sincerely,

Richard T. Kerin, P.E.

RTK/cg

cc: Maenan, Ellingson, Dorsey, Whitney Law Firm - Missoula

DATE 3-17-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB 426, 427
HB 413

Name	Representing	Bill No.	Check One Support	Oppose
Tracy M. Coffman	PSC			
Joe Menicucci	City of Belgrade	426, 427	✓	
Sharon L. Stratton	Flathead Co Commissioner	426	✓	
~~Barbara Nellworth~~	~~DHES-WQB~~			
BOB MURDO	SELF	426	✓	
Larry Fasbender	Cascade Cty - City of W Falls	426	✓	
Eric Basta	Self	426	✓	
Gene Huntington	Dick Bosworth	426	✓	
Tom Hoppood	Mt. Assoc Realtors		426	
TERRY KENDALL	CARBON COUNTY	426		✓
MINA NUTTING	CARBON CO	426		✓
John Smith	CARBON CO.	426		✓
Paul Hanser	Moulton Law Firm	426		✓
Greg Jones	P.A. Developments	426	✓	
ERLING TURTE	CITY OF GT. FALLS	426	✓	
John E. Tuthill	Student	426	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

Name	Representing	Bill No.	Check One Support	Oppose
Ted J. Dorey	Carbon County	426		✓
Richard Nisbet	City of Helena	426	✓	
Scott Anderson	MDHES	426	✓	
Lawrence Gaethofer	City Kalispell	426	✓	
Jim Wysocki	City of Bozeman	427	✓	
John Ake	MDA	413	✓	
John Shontz	Carbon Cty	426		✓
Ross Madsen	CDC	—	✓	
Glenn Elliott	MDOA	426		✓
Brian Smith	MDOR	413	✓	
Harry Mitchell	Cascade Co.	426	✓	
Chuck Stearns	City of Missoula	426	✓	
Alec Hansen	CITIES & TOWNS	426/427	✓	
Chuck Stearns	City of Missoula	427	✓	
John DeVore	County of Missoula	426	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

Name	Representing	Bill No.	Check One Support	Oppose
Mae Von Ellenson	Dawson & Whitney	SB 426	X	
Nancy Haggin	mont. Bldg. Industry Assoc	SB 426	X	
Anne Miller	DNRC	426	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10