MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB GILBERT,** on April 2, 1993 at 8 a.m.

ROLL CALL

Members Present:

Rep. Bob Gilbert, Chairman (R)
Rep. Mike Foster, Vice Chairman (R)
Rep. Dan Harrington, Minority Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. John Bohlinger (R)
Rep. Ed Dolezal (D)
Rep. Jerry Driscoll (D)
Rep. Jim Elliott (D)
Rep. Gary Feland (R)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Vern Keller (R)
Rep. Ed McCaffree (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Bob Ream (D)
Rep. Rolph Tunby (R)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Jill Rohyans, Committee Secretary
Louise Sullivan, Transcriber

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Testimony on SB 426 recorded and transcribed verbatim.

Committee Business Summary:
Hearing: SB 428, SB 426, SB 435
Executive Action: None

HEARING ON SB 428

Opening Statement by Sponsor:

SENATOR GARY AKLESTAD, SD 6, Galata, said SB 428 is a very straightforward bill and will state in statute what has been practiced in the past. The bill will impose a tax on lottery winnings over $5,000 at the time the winnings are received, as is required by the federal government. This will reduce a great deal of paperwork for the Department of Revenue and will simply accelerate the collection of the taxes owed on the winnings.

Proponents' Testimony: There were no proponents.

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

REP. NELSON asked **SEN. AKLESTAD** why he chose the $5,000 amount?

SEN. AKLESTAD responded it was drafted to coincide with the limit.

REP. MARIAN HANSON asked if the total tax is paid up front or withheld from each payment.

SEN. AKLESTAD said it would be withheld from each payment.

REP. FOSTER referred to the bottom of page 2 and the top of page 3, and stated it says it's effective on passage and approval and applies retroactively to all lottery proceeds subject to withholding tax regardless of when the prize was won. He asked if that meant anyone who has won more than $5,000 since the lottery began is going to be taxed.

SEN. AKLESTAD said it would apply to a set date and believed it would be the date of passage and approval.

REP. FOSTER asked the same question of **Jeff Miller.**

Jeff Miller, Montana Department of Revenue (DOR), said the bill originally had a July 1 effective date. The Senate amended the effective date to coincide with passage and approval. The intention is that any payouts from the effective date of this bill forward would be subject to withholding. The tax provisions would not apply to winnings that occurred before the passage and approval date; however, payouts subsequent to passage and approval would be subject to withholding even though the lottery amount was won prior to passage and approval. prior to .

Informational Testimony: There was no informational testimony.

Closing by Sponsor:

SEN. AKLESTAD said the bill would simplify the DOR lottery taxation and procedures and collections. He urged the Committee to pass SB 428.

CHAIRMAN GILBERT informed the Committee that the hearing on SB 426 will be recorded and transcribed verbatim at the request of Speaker Mercer. The Carbon County representatives requested it and it is perfectly legal within Montana open meeting laws.

CHAIRMAN GILBERT was required to testify before another Committee and, therefore, turned the Chair over to Vice Chairman Foster.

HEARING ON SB 426

Opening Statement by Sponsor:

SEN. ED KENNEDY, SD 3, Kalispell, said SB 426 was requested by the Senate Local Government Committee in response to the recent court case involving Carbon County. The legislation was requested by the committee because of the 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 when the revenues pledged to pay the bonds are insufficient. Local governments have also agreed to levy taxes to loan to the revolving fund in case the revolving fund is inadequate. The nature of SIDs makes it necessary for some mechanism to handle shortfalls and delays in collecting 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 decision did not offer guidance as to when the agreements to levy taxes for the revolving fund can be enforced. The laws for SID bonds revolving funds for municipalities are nearly identical to the county law in question. There's a real need for this legislation. Most of Montana's largest municipalities and urban counties sell SID bonds every year to pay for water, sewer, paving, curbs and other improvements and to develop neighborhoods. Because of the Carbon County decision, there is a concern that cities and counties that will not be able to sell their bonds as planned and proceed with these SID projects cannot go forward.

The Carbon County decision left undefined the circumstances when a city or a county may not be required to make loans to the revolving fund. SB 426 would define the circumstances when local governments must make loans to the revolving fund and when they

would not be required to make loans to the revolving fund. The bill clarifies three points: 1) the obligation of the local governments 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 loans is not unlimited and the bill defines when the obligation would end. I think we have several people who want to speak on this bill and I would reserve the right to close.

Proponents' Testimony:

Larry Gallagher, Community Development Director, Kalispell: 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 in the improvements necessary to meet housing demands associated with growth. We have a current need for SID financing in Kalispell and numerous developer requests are now being considered. Because we recognize the risk associated with this type of financing, we are asking developers to submit hard equity into sewer and water, financing only curbs, gutters and sidewalks and paving with SID financing. It is our concern that without the amendment to the SID policy that you are considering today, that local governments will be unable to sell bonds because of the poor risks they represent to bond buyers. We believe that the suggested amendment to present law requiring local governments to fully fund the 5% revolving fund each and every year for the life of the bonds seems to make extremely good management sense and provides the bond buyers with a sense of security and thus, a lower rate for communities. We, therefore, request your approval of SB 426.

Michael W. Schestedt, Missoula County, Missoula: I'm here to speak in support of SB 426. In our view, the fundamental thrust of this bill is a "boy say, boy do." We promise to levy for the revolving fund and to sell bonds based on that promise, then you really ought to do what you said you were going to do if the assessments don't come through. The provisions of the bill that require evaluation of the RSIDs' financial feasibility in relationship of the assessments to the value of the property - those are items that are prudent fiscal management. I think any rational government entity follows those procedures already and we have no problem at all with having this written into the law. I would raise, however, one caveat about the bill as amended. In Sections 5 and 10, it limits the issuance of our SID bonds to property that has been included within approved subdivisions. We recognize this as a further effort of this body to restrain unlimited and uncontrolled development. We ask you, however, to recognize that a great deal of that has happened in the past and we've got a lot of lots and tract developments from the old law out there, that have people living on them and the people want services and the RSID mechanism is the only way that we can effectively and fairly fund these services. So, we would ask

with regard to those provisions, you either strike those amendments in their entirety or perhaps better amend it to provide that RSIDs may not be created or bonds issued for property divided after the effective date of this bill, which has not gone through the subdivision review. Please leave us the ability to sell the bonds by making the promise to levy to the revolving fund. Second, let us continue to use this mechanism to fund and to assess the people benefiting from the improvements in those areas subdivided.

Bruce MacKenzie, partner in the law firm of Dorsey & Whitney: We support SB 426 as it provides limits regarding loans. We believe it is necessary in order for us to give unqualified legal advice. We think SB 426 is a good bill. We have prepared written testimony which gives you the background of the legislation and I have been involved in lobbying in SID legislation since 1979 and have a good understanding of SIDs.

Kreg A. Jones, Vice President of D.A. Davidson & Company, Great Falls: Mr. Jones read his written testimony and urged a do pass. **EXHIBIT 1**

Alec Hansen, Executive Secretary, Montana League of Cities and Towns: I have been contacted by numerous cities across the state asking me to come in here this morning in support of this bill. The cities are concerned that if this bill does not pass they will not be able to continue to issue bonds to finance for further necessary improvements. I thank you for your consideration and hope that you would concur in SB 426.

John Youngberg, City Councilman of Belgrade: Belgrade is one of the cities that's gotten caught in the crunch on this court case that brought this bill about. We had passed an SID in an area, the people had all signed on to it, we had sold the bonds, got the bids and everything. Now, the people that bought the bonds are holding back saying, "We're not going to do anything until we find out what's happening with this SID thing." We've been written up about three times a year by the Department of Health for air quality. We're a very fast-growing community and we have a lot of dirt streets and we have a lot of dust in town, so we've been written up. The only method we have of paving our streets in Belgrade is through SIDs. With the amendment that was offered prior, it states that it can only be on reviewed sections of the city or reviewed SIDs. A lot of the parts that we're paving are old parts of town that have had streets for 40-50 years that are still gravel, so we need to take a look at the amendment that was put on and maybe pull that off or offer other amendments. But, we do need to have this so we can do these in small communities. It's the only means of paving and extending services that we have.

Shelly Laine, Director of Administrative Services, City of Helena. Ms. Laine read her testimony in support of SB 426. **EXHIBIT 2**

Opponents' Testimony:

Ward Swanser, attorney, Law Firm of Moulton, Bellingham, Longo and Mather, Billings. We were hired by Carbon County and we were involved in the Carbon County litigation. Just a little background to set the stage for this bill and so you can kind of understand why it's here and what it attempts to address. Carbon County was involved in a situation where someone came in and put in a golf course and subdivision in Carbon County. A revolving fund was created and they initially tried to sell bonds for the improvements - it was a raw land subdivision. No homes were built on it at the time - attempted to sell bonds and they had no bidders. Subsequently - you can privately negotiate bonds - underwriters came to Carbon County and said we will take guarantees and asked to have guarantees and they had the developer guarantee 8 years of the first 15 years of his bond issue. The county then agreed to create a revolving fund according to Montana law and the district was created. Unbeknownst to the Carbon County Commissioners, the guarantee of the developer which would have guaranteed the first eight years of payment, was stricken as a recommendation of bond counsel which is the same bond counsel that represented Carbon County, Dorsey & Whitney. In that situation, then, the people that were putting the subdivision together did not make any further payments and the thing went into default. Carbon County did levy under its revolving fund - did honor all commitments - and paid over $400,000 of money that it collected from its taxpayers. The revolving fund - at that point, Carbon County asked for clarification from the court as to whether it must continue to levy on its revolving fund. First of all, the revolving funds, you should understand what the revolving fund was for. SIDs and RSIDs, from the very inception in the whole of statutes, makes reference to them being paid from assessments against the property. They're not obligations of the city or county - they're paid from assessments on the property. A packet has been handed out to all of you by John Shontz. **EXHIBIT 3** In there you will see the bonds themselves make reference to "that all bonds will be paid by assessments against the property." Here, the property pays for the assessments. The problem that comes up then is, do we make assessments on property on raw land when, in fact, the improvements may be worth more than the land? That's a bad deal, this is bad legislation and this is an opportunity to continue to perpetuate that type of situation. When improvements are worth more than the value of the land, that's when you're going to get in trouble. What a revolving fund was designed to do was make up the shortfall, to collect the SID and RSID money to pay the bondholders by taxes on the property. Since you couldn't sell the land for three years and you couldn't collect the taxes because everybody doesn't pay their taxes timely, what happens is that, under that scenario, one year and one person not paying his taxes, you won't be able to make the full bond payment to the bondholders. So, a revolving fund was set up and designed so that you would loan money out of the general fund, you would create a fund to loan money to make up that shortfall. The

county, at that time, was then given a loan on those assessments and a lien on the land. So when the land was sold three years down the road, or 18 months or two years down the road as the laws changed somewhat, you repay that loan and go on. That was the only purpose. The law has always been clear in Montana that in fact these were not general obligations of the city or town, that they were obligations that were supposed to be paid for by assessments against the land. All Carbon County did was ask the court for clarification as to how much longer and what it should do. When the Carbon County case came before Judge Honzel - this is a complicated legal issue, he had probably four inches of briefs - they made the arguments that have been raised in the Senate, and here on behalf of the bond people in support of this - those arguments were presented to Judge Honzel. Judge Honzel reviewed the law and said there is a limit. The choice is, who should pay for this. Should the people in the district pay for it, or should the external taxpayers, the general taxpayers in the county and city pay for these bonds. He held that when there is no longer a loan, no opportunity to repay, when the district itself became insolvent, at that point, they could stop making payments. In the Carbon County situation they had already loaned $400,000. If they had continued there may have been an additional $1.2 that they may have to have loaned the project, with no hope of ever getting repaid. In fact, they were told by bond counsel that this could go on indefinitely and so, essentially, what you are doing is burdening the taxpayers. This is a substantive change in the law. Don't ever let anyone kid you that it's not. What used to be a loan, you're now saying is a pledge. What used to be a revolving fund, you're now saying is a guarantee. What used to be a special obligation and no obligation to the taxpayers to foot the bill, is a limited general obligation of the taxpayers. Five percent per year is the same as the total amount of the bond indebtedness on the project.

The Carbon County situation is a $3 million bond issue. Five percent a year for 20 years is $3 million. Essentially, what this does is say that you can shift the burden to the taxpayers as opposed from the people who got the benefit and the developers who put this thing together. People have said that they're fearful they could no longer sell bonds. Judge Honzel's decision did not say that you could do away with the revolving fund; it did not say that you didn't have to continue to loan; it did not say that as long as it's a loan, opportunity to repay or revolving fund like it was supposed to be, that it would not work. Judge Honzel said that when it's insolvent, when in fact you can never get repaid, and it's a gift, no longer a loan - then there's a stop and an end. This bill purports to shift the burden to the innocent taxpayers who had no opportunity to vote on this indebtedness and no opportunity for any hearing as to whether he wanted to be assessed or not. Just as an example of how much money we're talking about - we're talking big dollars - and you should be aware that you are making a decision who pays this bill - the developers or the taxpayers.

In the Carbon County situation, it was 10% of their total general levy - was the 5% for the revolving fund - $150,000. I ran through some other counties and cities and there's several others out there that their revolving funds were 10% of the levy, and in some cases, 15% of their levy. So we're talking large dollars.

There's also some other questions that were presented with the Judge Honzel decision. One is, and it is for good reason. The constitution said that there should be limitations imposed upon counties and cities as to how much indebtedness they can put on their taxpayers without voter approval. In the case of counties it's $500,000. You cannot assess them more than $500,000 worth of indebtedness without voter approval. Now the bill, on page 3, line 25 does away with this exemption. It says, for example, that the loan required to be made by the county is made without regard to any limitations or restrictions. In this case then, it's saying that you can impose the $3 million bond issue on Carbon County residents without their voter approval. In the Senate hearing we heard there were $71 million worth of bonds that are outstanding. That means there could be $71 million imposed on taxpayers without their approval. We think that this raises a real constitutional question and a question that's still there. What will take precedence? The precedent when this statute was put in that says you can only incur indebtedness up to so much - $500,000 - or can we just strike this and say, except for revolving funds, we can sock the taxpayers to the tune of maybe $3 million or $10 million, or whatever the dollar figure is. We submit that this is a situation where people are crying wolf and there is no crisis. Honzel's decision does not prohibit revolving funds, it does not prohibit loans. If they don't make loans, as we were told in the Senate hearings, Dorsey Whitney is advising all their people, underwriters and bondholders, that if counties do not continue to loan, they will bring a mandamus action to make them do that loan. So, they can't just decide willy-nilly I'm not going to use my revolving fund. The law said that there's a limit, it's when you shift that burden to the taxpayer from the developer that the problem arises. There is no crisis in this situation. We submit that bonds can be sold. The people that were involved in the litigation are the people here asking for this release. Dorsey Whitney was the law firm involved and they're representing the clients on the opposite side of Carbon County. Yet, they were the bond counsel for Carbon County at the time that this issue was offered in Carbon County. Dane, Piper and D.A.D. were all underwriters for this district and they're asking for this as well - this legislation. There is no need to make this retroactive under any circumstances. It makes no sense to make this retroactive. To make this retroactive actually imposes an obligation on your local taxpayers they didn't have before. I don't know what you folks are hearing, but we were at coffee the other day and everybody was worried about how much taxes there will be once we get through with the federal and state and gas taxes, and everything else, but by a slight-of-hand and by this one saying another 10 to 15% of what their taxpayers are being charged by

the counties or cities to pay for benefits and improvements for a developer is something you should take very seriously. I think it's something that people knew - the taxpayers are the ones that are not represented here today except by you folks.

In the handout that you received, in item #6, **EXHIBIT 3,** there's a letter that I read to the Senate Taxation Committee, and it's kind of a question and answer. You've got questions with regard to what the effect of the legislation was, and you should have recorded that, and it's also an amplification of what our position was in regard to Carbon County before Judge Honzel. When you talk to somebody about bond issues, and I don't blame you because I have the same problem with the partners in my office, you say, "I'd like to sit down and talk to you about a bond issue for 15 minutes," their eyes kind of glaze over and they say, "What are we going to talk about next?" But, I mean, it's not one that's a really favorite topic that anyone really wants to try to address. It does have some ramifications though, and that's what I'm asking you to consider. Read that if you have an opportunity - that handout - the purpose of the revolving fund, legal issues raised by the Senate bill. I'd like to point to one thing in this is that on page 4 of that, line 15, we showed what other states are doing and how they're addressing this issue and what's an alternative to this? The question being asked today, a revolving fund today says that you will loan, but it should be a secured loan, which means that if the project can't pay for itself maybe somebody shouldn't buy the bonds. Additionally, it says - and there is no prohibition this, it has been used quite often - if the project and improvements are worth more than the land, what has happened is that the underwriters have acquired guarantees, letters of credit, and other monies from the developers to guarantee that those payments will come in, so they know they are going to get paid on those bonds. That's what we thought happened in Carbon County except the underwriters at this point, and bond counsel struck, the guarantee and we're left - they shifted the burden to the taxpayers. But look at how it should be handled. Who should pay? I've got four alternatives on how this can be done. 1) Capitalize at 20% into the bond issue itself. Capitalize that at the time you sell those bonds, use that as a revolving fund and that's the limit and extent of the revolving fund and make loans out of that fund only. 2) Do as it's done in Colorado, create a deficiency fund. In Colorado, in the deficiency fund, it says, "we will make loans but only after 80% of the payments have been made by the land." As you can see, this again is protection for the taxpayers. 3) As is done in Utah, they can guarantee bonds. In that case, they said only one mill levy would be used to guarantee these shortfall loans. After that, it had to be a general obligation and let people vote on it. 4) Last, Wyoming used an innovative process. They have an excise tax on cigarettes and gas up to 2% a year for 10 years or 20% of the total amount of the bonds, and used that as the guarantee for the revolving fund account.

You're offered these as alternatives. You're asked to pass a bill by people that are directly involved and adversely affected by the Carbon County suit to make a substantive change to the law without presenting or considering the viable alternatives and the last thing you should remember is you are making a dramatic shift from the law that exists today and you're making it a guarantee and a burden upon the taxpayers. Thank you.

VICE CHAIRMAN FOSTER: Before we go on, that was pretty long testimony and I would strongly urge the opponents who are following, please try not to be redundant. That was a pretty thorough explanation of his view, and if you have something new we'd love to hear it.

REP. ALVIN ELLIS, JR., HD 84, Red Lodge: While my testimony today will clearly deal with an SID bond sale in Carbon County, I could just as easily be representing Broadwater, Silver Bow, Park or any other county. I believe it is poor legislation and it does not provide as much protection for the purchasers of these bonds as does Judge Honzel's decision. Innocent county taxpayers should not be forced to pay for bond counsels' mistakes when they allow the sale of junk bonds, and that's what these were. My wife, Maureen Ellis, protested the sale of these bonds at a hearing that was held on them but to no avail. I can tell you that the momentum for a sale like this can be very compelling when they provide - when the sale provides an economic benefit to the community involved. Witness the current sentiment regarding the Vet's home in Glendive. It is no satisfaction at all to the taxpayers that not one of these county commissioners survived an election in '86 or years following. They're still saddled with that decision. This bill does not protect bondholders, as Dorsey Whitney maintains. What it does is provide taxpayer protection for Dorsey Whitney from the bond purchasers in any legal action. If the bondholders were really protected this would not have grown from $2.2 million at the time of the sale to $3.8 million today in spite of Carbon County putting through the revolving fund 10% of their total county budget into this project. I would submit to you that the position of the bondholders in this case can only grow worse and, in all probability, they will never get their money back, even if they are forced to contribute to this fund forever. Now, that's a long time, but in the foreseeable future with low interest rates and these bonds - these tax free bonds were selling at 12% - what Judge Honzel's decision did was say that when the SID is bankrupt, that the revolving fund loan can never be paid back and, therefore, it's not a loan. It is also important to remember that bond counsel rejected letters of credit, as was mentioned by the developers as collateral, perhaps because they thought the taxpayers had deeper pockets. But I want you to remember this; it's the developers who stood to benefit, not the taxpayer in this development. I think these questions need to be answered by this committee. Would both the taxpayers and bondholders be better protected and better served if counsel protected both from the sale of junk bonds? Doesn't the firm offering these types of securities have some

responsibility as to evaluating their underlying soundness? In this case, D.A. Davidson and the other sellers of these bonds? Should bond counsel be free to endorse the sale of this type of bonds when the value of the improvements or SID is clearly in excess of the land value. I believe SIDs and RSIDs will continue to be sold, and they will be safer for investors if counsel has some risk when they guarantee their safety. I believe the answer to these questions demands that you reject SB 426. I urge you to vote for the taxpayer, for the bond purchaser, and against the law firm who I believe is the sole beneficiary in this legislation. Thank you.

Tony Kendall, Carbon County Attorney, Red Lodge: I do want to make a point, or at least reinforce a point. The history of this legislation only goes back to February 3 of this year and that's when Carbon County won our lawsuit against the people that drafted this legislation, that's D.A. Davidson, Dain-Bosworth and Piper-Jaffrey, and they're all represented by Dorsey and Whitney, and a couple weeks after that, this bill hit the Senate floor. We already knew that, so keep in mind that this legislation you're considering today really is part and parcel of the litigation strategy of Dorsey and Whitney, and that's what's keeping me awake at night, and the whole thing is just totally designed to lessen their risk. One point that wasn't brought out very strongly, if at all, that I think demonstrates that. This is part of the litigation strategy and it's a question that was barely addressed, and it certainly wasn't asked by the proponents and that's the retroactivity of this legislation. Essentially, this legislation is being sold on the scare tactic and theory that if it doesn't pass we're not going to sell any more bonds in Montana. There will be no more RSIDs because we won't be able to get good opinions of bond counsel and we can't sell them. Okay. Even if that were true, we don't believe it is true, but even if that were true, why then make it retroactive? I defy anybody to come before the committee and explain and give a credible reason for the retroactivity of this bill and how that retroactivity benefits any taxpayer in the state. I mean, those bonds are sold, right? To explain it, look at the way it happened in Carbon County as Mr. Swanser pointed out. These RSIDs in Carbon County were sold they way that they are all over the state. They were sold to investment firms - Dain-Bosworth, Piper-Jaffrey and D.A. Davidson. These are real smart folks. These people understand investment and they understand risk. It's their job to understand risk and they understand why yield at 12.7% equals a high risk. That's what they do for a living. They bought these bonds - bought them, free, clear, fully - they bought them. They then turned around and resold them to their clients. That's fine, that's the way it's done. Now, if there was some problem with their analysis, if there was some problem with the way they assessed the risk, and maybe if there was some problem with the way that they disclosed that risk to their bondholders, then who's fault is it? Is it the county's fault? The RSIDs were sold to sophisticated investors who then sold them to their clients. Now, when those investments go - those high risk

investments go sour, as maybe they have in the past - this one certainly did, and apparently somebody here thinks that a bunch of them are going to go sour elsewhere, who's supposed to clean that mess up? Why are the taxpayers being asked to come in retroactively and pick up the tab for this thing? I've been listening to and reading letters from Dorsey & Whitney now for - since this bill was introduced and I haven't gotten an answer - I don't think there is an answer to that - why the taxpayers should come in and clean this up. Everybody else said the rest of the stuff better than I can.

VICE CHAIRMAN FOSTER: Sir, what's your name again?

Mr. Kendall: I'm **Tony Kendell, Carbon County Attorney.**

Mona Nutting, County Commissioner, Carbon County: The only statement that I would like to make is that you should have received a FAX yesterday from Barb Campbell who's the owner of Double Tree, Inc. of Bridger, Montana. What Barb did in her letter basically was to negate the information that you have received that states that bonds will never, ever be sold again in Carbon County, because her letter will tell you that there have been bonds that have been sold in Fromberg and in Bridger - the latest was an issue that was advertised in the town of Bridger following the November election. There were three bids that were submitted for these bonds and all of those bonds were sold. Thank you. I would urge the defeat of SB 426.

Mike Matthew, County Commissioner, Yellowstone County: We've heard things about the issue of "can't sell bonds". I think what we're hearing and seeing here though is an issue from where we may - we have this language that we can't sell bonds, to maybe an issue where I would think that any elected official in good conscience couldn't redistrict without going to the whole - the vote of the people. What we're talking about here, really, is the creation of a general obligation and a general obligation, it's my feeling, is a vote of the general public. And maybe that's the course we'll be, but how many of us think that we'd ever get any districts created if there was a general vote of the people in that county. We had somebody mention, on the opponents' side, the taxpayer may be able to object to the use of the revolving fund - well, they should be able to, by God. I think we've, in the past, all lived with quick fixes. SID funding and creation does need some fixing. I don't think there's anybody here that would not say that. But, a quick fix, as we all have seen in the past sometimes creates as many new problems as it resolves problems and I have a real feeling that's what this legislation may be. Thank you.

John Shontz, Law Firm of Doney, Crowley & Shontz, Helena, represented Carbon County: I'd just like to point out a couple of things. Judge Honzel's decision said that if the project was totally insolvent or bankrupt, the taxpayers should not have to bail out the bondholders. I'd like you to refer to - in the

handout I gave you - **EXHIBIT 3,** item #2, which is a copy of the Carbon County bond. If you look at the back of the bond, it says in yellow: "The Bond is payable from the collection of a special tax or assessment which is a lien against the real estate within the Rural Special Improvement District, as described in said resolution hereinbefore referred to, and is not a general obligation of the County." In item #3 - item #4, look on page 4 of that - this is a case under the law in Montana that governs revolving funds and it says, "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." It's a loan, it's not a guarantee. Finally, look at item #3 alluding to the fact that he's been following - been working with this since 1979, and that's true. Item #3 is a letter from Mr. MacKenzie to the legislature when he worked for D.A. Davidson and the second paragraph says, "....since the .....City of Havre vs. Henssen", which is the case I've just read to you, "that special improvement district bonds for which a revolving fund is pledged do not constitute a debt of the issuing entity and therefore does not constitute a general obligation of that entity's taxing power." I bring that to your attention to point out that in 1981 the underwriters understood that these bonds were not general obligations of the taxpayers, but the revolving fund was essentially a temporary cash loan basis. And I beg to differ with the argument that we've heard today that bond underwriters and bond counsel that have been under - and local governments - have been operating under the assumption, for 40 years, that this is the way it's supposed to be according to the bill.

Finally, I'm going to point to a couple of things in this bill itself. The bill does limit the sale of bonds or when bonds have to stop - the sale of bonds have to stop - when the revolving fund has to stop paying them - point out a couple - cities can declare bankruptcies - counties, which are political subdivisions of the state, can't do that, it's not an option for them. The bonds in the Carbon County case are in bankruptcy, so one of the options the county would have to take a tax deed to the property is not available, consequently this could go on for years and years and years, but I think that the county ought to have the option, when a project goes into bankruptcy or when tax deed proceedings are initiated, to cease payment. I think also, on page 2 at the bottom, it says that - something important - it says "Regardless of the value of the collateral the county and the taxpayers have to keep paying." How many of us would make an investment like that? It seems to me that if the county - the revolving fund - if the taxpayers are going to be required to make an investment then they ought to at least have the privilege of deciding that investment can be made on the collateral behind it and should not be forced to make a loan - that is all Judge Honzel's decision said.

Informational Testimony:

John Tubbs, Bureau Chief of the Resource Development Bureau, Department of Natural Resources and Conservation: I had intended to be an active proponent but the basic point that I wanted to address was one of the State's position as a bondholder. The State currently has about $10 million in its portfolio of loans in SID bonds in the water development loan program. In fact, the coal severance tax and also general obligation bonds - and, in fact, the State Revolving Fund (SRF) program has seen a relatively high demand of SID development because of the outlying areas of municipalities and rural districts. The problem that we have at the State is we're not the public financial market, whereas, if this bill does not go anywhere, D.A. Davidson and Dain Bosworth, or any bonding company, can react by raising interest rates in order to cover the additional risk of not having a revolving fund. Unfortunately, State programs are not in the public bond market - we're basing our sales on general obligation bonds of the state and, therefore, our interest rates won't reflect the additional risk. From the State's perspective, if this bill passes, we will continue to issue SID debt through the water development program and the waste - SRF program. However, if this bill is defeated, we need some direction from this legislature as to whether you want us to continue to invest in projects where the backing for that project is an SID. They're riskier than they were yesterday and, as a program manager, I guess I'm asking for some direction from you - if you table this bill, do you want me to continue to enter into loans for special improvement districts even though you know they're at a higher risk than they are today? If you don't, I guess I'd ask for you to tell me. Thank you.

CHAIRMAN GILBERT RESUMED THE CHAIR.

Questions from Committee Members and Responses:

REP. HIBBARD: Questions for **Bruce MacKenzie.** Bruce, we've heard some very compelling testimony here this morning, and it kind of appears like what's happening is there's a transfer from the strength of the underlying project to the revolving fund which becomes an obligation of the general taxpayer, which may not have any connection to the project - that's how I've filtered this thing down. I realize that if this legislation is defeated it may affect the marketability of bonds - we've heard numerous testimony to that effect - but it appears to me that there might be a better way to do this, as is delineated here in this booklet - some of the things that other states have done like capitalizing an amount for the revolving fund from the bond proceeds; creation of a deficiency fund; creation of a guarantee fund and creation of a special fund. I guess I'm asking you to try to change my mind.

Mr. MacKenzie: I think you've referred to a very important question and maybe what I could do here is a page of history. In 1929 when the legislature first adopted the revolving fund it was adopted to provide that very type of thing that you're talking about because when you think about an SID it's like a piece of graph paper. If only ability to pay is based on the assessments levied against the property owners within that piece of graph paper, representing one square in the graph paper, and the law restricts it on the amount that you can assess for that special improvement to just that amount. You can't levy it even more. In 1929 there was no revolving fund in Great Falls during the depression and some of those property owners stopped paying and, as a result, there was a shortfall. That's when the revolving fund was first created. Then, that continued as the source of the payment for the shortfalls up until about 1981, at which time Senator Turnage recognized the mischief of that revolving fund because there was limitation on how much you could levy to fund the revolving fund. So, three things were done in '81. They funded the revolving fund - they allowed the funding of the revolving fund, just as you read here, from the initial capitalization of bonds up to 5% of the total amount of the bonds. So, that was a source of funding for the revolving fund, and they also kept the general fund transfers that could take place, and also, the general tax levy, but they limited the amount that could be levied to just 5% of the total bonds outstanding. Now, 5% of the total bonds outstanding for just that one district - that's all the source of payment available to the bondholder - the only thing the bondholder is going to get back is his principle over that time. And that's a bad district that developed - it had no property owners that were going to make the payments on the assessments. I agree, that's bad underwriting, that's bad development, that's bad counsel work to allow a district to get developed like that. But, that would be the ultimate result. And that was the compromise, and if you go back and read the 1929 case that decided the revolving fund would be available, it was a balancing act that the court decided. You know, these improvements in our community are a benefit to all our community, and the local government people have said it's a benefit to our community because they have to decide that at the time they authorize the bonds and authorize the districts. So, it's appropriate, and the court said this, that the general taxpayers should take care of these shortfalls. They never envisioned that it would be responsible for the whole thing and that's why in 1981 there were limits placed on the amount that would go into the revolving fund. The revolving fund can only loan as much money as it has, and that's limited to 5% of the total bonds.

REP. HIBBARD: There are restrictions in the federal tax law that relate to the taxes and status on the bonds as to how much you can have in these reserve funds available to the revolving fund. I think **Mr. Swanser** represented, or suggested, that we set something up that they fund it at 20% at the outset. If you do that, what these bonds would then be is called arbitrage bonds

under the federal law, and they would not bear taxes and interest because you have a reserve fund that exceeds the allowable limit under federal law. So, at the point in time, we could not give a tax break because then the bonds would be at a much higher interest rate.

One further question, Mr. Chairman. Bruce, I think we've heard testimony here - maybe from **Mr. Swanser** - that there is a 10-15% of general levy that was transferred to the taxpayers in the general fund of Carbon County. I believe what we're dealing with here is statistics and you know statistics - and I'm not suggesting Mr. Swanser is attempting - I think his statistic is correct that it represents 10% of the total budget, but the amount that can be levied is limited to 5% of the total amount of the bonds outstanding. Unfortunately, in their case, you have a situation in which the total amount of bonds outstanding is a significantly high number so, as a result, 5% of the total bonds outstanding may represent a higher number of the total budget, but it is still restricted to the 5%. I might also add here, that reference to the fact that we removed guarantees. Again, this gets into federal tax law - we didn't remove any guaranty. What happened is there were three years of letters of credit available. In the first year, the amount of the issue was more than they needed to complete the construction so what Carbon County did is, they used the excess monies and deemed it to be the assessment payment of the developers and never called the first year's letter of credit. So, in other words, they used bond proceeds and deemed them to be payments on the assessments by the developers and never had the developers make a payment in the first year - never called in that letter of credit and, unfortunately then, that first year letter of credit was gone so the second and third year letters were called. It just was one thing kind of compounding on another that caused some problems here.

REP. HARPER: Bruce, the retroactive applicability. Why is that a necessary part of this bill?

Mr. MacKenzie: **REP. HARPER**, I think there's two reasons for retroactivity. First of all, it's important to understand that at the time that the amendments were made in 1981 they capped the amount that could go into the revolving fund so it didn't become, as Senator Turnage feared, a general taxpayer bail out. There was no limitation placed on how long those loans had to be made. In 1985, the attorney general issued an opinion to the city of Columbia Falls that said the statutes say the loans have to be made until the bonds have been paid - until the bonds have been paid in full - that's what the statute says right now. In a case like Carbon County here, where they've got more out there than they can ever pay with 5% - remember bonds bear interest too - unfortunately, the bonds cannot be paid in full until that obligation is retired so you could have a situation where that obligation goes on forever, 5% each year that has to be levied to put into the revolving fund or gets loaned to the bonds and its

paid out to the - but they never get their bonds paid. What this legislation does in a retroactive manner is put a cap on how long those loans have to be made. In the Columbia Falls bankruptcy case, the judge ruled that you have to make the loans as long as the bonds have matured. In other words, up to the final date of maturity of the bonds, that's what cuts it off. That's what this bill does, it points to a specific point in time, and actually when we talk about needing general taxpayer protection, this bill provides that. It makes a date definite and certain as to when the obligation to make that loan ends and, make no mistake, the Supreme Court has said there is an obligation to loan that. What you have is a date definite and certain that that loan obligation is cut off so those taxpayers don't have to continue to fund this revolving fund forever. Retroactively, this bill applies that to all bonds currently outstanding. The second reason is, in Judge Honzel's opinion, he said that the responsibility to loan from the revolving fund is cut off when the district is insolvent or if the monies in the revolving fund are insufficient to pay the bonds. So, as I've answered **REP. HIBBARD'S** question, there is a possibility here that some districts were 5% of the total bonds outstanding never enough to pay off the bonds so, at some point in time, the revolving fund could be deemed insufficient for whatever reason. We don't know what that means. What this does is clarify that with respect to existing bonds and to future bonds. That's why it's important.

REP. HARPER: Suppose that retroactive applicability was taken out of this bill. Wouldn't the bill still serve a real purpose?

Mr. MacKenzie: We think the bill would serve a very real purpose. However, I think then you have a problem that you have bondholders who are out there with some bonds that don't have the benefit of this and they have the uncertainty that Judge Honzel's opinion presents. And, they're the same people who would probably like to buy bonds in the future. We think it cures that problem. Secondly, it's also important from the standpoint, as I pointed out, then those local governments who are out there who have bonds outstanding would not have the assurance that at some point in time that loan obligation will end definite and certain as opposed to now, it could go on, according to the attorney general's opinion with respect to those bonds, indefinitely. So, we think it provides some clarification in a definitive nature to the statute. I have one thing I probably ought to border on, **REP. HARPER**. There were a number of discussions about amendments as a result of **SEN. DOHERTY**. I believe that the Legislative Council has clarifying amendments on that.

REP. KELLER: I have a question for **Mr. Swanser**. Could you tell me why - possibly how it could harm future bond sales?

Mr. Swanser: The reason I don't think it harms future bonds sales is because Judge Honzel did not get rid of the revolving funds. Just said you can still make loans under this statute. What's being told here is what they'd like the law to read rather

than what the law was. But I think just one question - one statement and it's just very short of what the law was and what Judge Honzel found. And this just kind of clarifies this. We're now talking about an opinion that existed in 1930 - and this is what Judge Honzel found. In the Stanley case, however, the court said, "There 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." It goes on and says it is not general obligations. That's why this - I think - it's hard to keep your eye on the ball on this one. They're saying now we want that as a guaranty rather than being a loan that's secure. There is - in the process right now, it is envisioned that the city and the county pay some. When they sell that piece of property and get that money back, they may not get the full amount to pay the loan on that lot for that assessment when the guy didn't make it. This is not taking that away at all. There is some obligation - Carbon County paid $400,000 before they asked for clarification. The clarification is asked what the law is in Montana and my obligation when I can never get repaid. Honzel decided and said you can never get repaid, you're now taxing the taxpayers rather than looking at the district, that's not what this whole process was designed to do.

REP. KELLER: Do you have any opinion on what **Mr. MacKenzie** said in regard to retroactive applicability?

Mr. Swanser: First of all - a couple of things. Number one, the retroactivity aspect of it - there is no reason why it should be retroactive at this point. The bonds that are out there that aren't sold, that aren't - there's probably only a couple - Columbia Falls is one that had a problem and they went bankrupt. Carbon County - the law right now under Judge Honzel until it's referred and the supreme court takes a look at this and that's where this should be - will set the law in Montana what the total obligation of the revolving funds are and who should pick up the burden, as far as payments of the bond. If they interpret as Judge Honzel did correctly, that it's an obligation of the district - that's all we're saying - this is a major shift - don't think for a minute it's not a shift - it's a shift of obligation and we don't think there's any reason for the legislation. We do think that there's probably some reason to study and look for the next time out - not a quick fix - but look at some of these other options that are available and used by other states and the nature of your needs.

REP. DRISCOLL: Question for **John Shontz.** What is the difference between the Stanley case and the Carbon County case?

Mr. Shontz: Mr. Swanser just quoted language from the Stanley case which was the case **Mr. MacKenzie** was referring to when he was talking about a balancing act as the language that **Mr.**

Swanser pointed out. Part of the balancing act is that the loss is the bondholders' and not the city's. The only thing that I think that's important that's different here is Carbon County, being a political subdivision of the state, does not have an option that a city has in order to rid itself of liability, which is to declare bankruptcy. This is now, however, open ended - under the current law - an open ended process. It goes on forever and ever, because one of the things counties can do, and generally do do under the current law, is to take property and sell it at a tax deed sale. When the property is sold at a tax deed sale, then all liens on the property, including the liens of the bondholders, have extinguished - they're gone, they're dead. So, to say that we need this bill in order to prevent counties - taxpayers in counties from paying forever is not true. I know it takes about three years for the taxing process to occur, and during that period of time, counties and their taxpayers would have to pay some. One thing that is unique about Carbon County is that the joint venture people that guaranteed the property put the property into bankruptcy. I think it's important to make the point that under the current law, without this bill, there are vehicles the county commissioners have to end the liability in a fairly short order.

REP. DRISCOLL: Up there on the golf course, there are some houses and there are some lots that are undeveloped, so who's in bankruptcy?

Mr. Shontz: The project itself, the district, went into bankruptcy. Maybe **Mr. Kendell** can answer that.

Mr. Kendell: The developers on this project still own about 84 lots which is a significant number and they're all undeveloped. They whole development went into bankruptcy, they still own those lots. They're not available for tax deeds because they're protected by the courts.

REP. HIBBARD: **Mr. Kendell**, I believe you're the person to ask. I'm a little confused here because one of the testifiers, I recall, said that counties couldn't take property through tax deed proceedings and **Mr. Shontz** just said the county commissioners did have a way that they could use those liens. Could you address that?

Mr. Kendell: Yes, I can try, sir. Present law has an ability for a county to - when a lot goes delinquent, the county can accelerate the future assessments due against that delinquent lot the same way if you had a mortgage and you went behind, the first thing the bank does is call that whole note due at the time. Present law allows the county to do the same thing, so if the lot goes delinquent, it can call all the assessments due and payable. Then it takes a tax deed and that forecloses out all the liability against that lot. It still takes that away, by the way - it takes that remedy away from counties. I'd like **Mr. Swanser** to answer that.

Mr. Swanser: I'd like to clarify that just a little bit. We're talking about two issues. Number one, can I free up the lot from the obligation of the bonds. That's one fact. When I sell for tax at the lot tax sale, I distinguish all that SID obligations - RSID obligations - so when you buy the lot at a tax sale, you don't have to pay behind, you pay just what you pay for the lot. But it does not extinguish the forward - the obligations on the SIDs going forward. But, that's just to clear up the lot itself. It does not clear up and free up the obligation as far as the county goes until this case was decided, as to what point does the county still have to loan? What Carbon County was told, no matter if you sold all the lots, you still must levy, continue to levy the $150,000 a year or 5% of the $3 million - continue to do that indefinitely, you know, because you have to do that until the bonds are paid, and you can never pay the bonds, so there would be no end to this whole process. We're talking about two things. What frees up the county and what frees up the lot, and I think there's a difference and that's why it's kind of confusing - because we're talking apples and oranges.

REP. FOSTER: I have a question for **Mr. Swanser** - a couple of questions and I'm sure he'll be very brief. There's been a fair amount of discussion about the shifting of the burden to the taxpayers and, as a point of clarification because I haven't had a chance to look through the whole bill, this bill does not allow for a vote of the people in any way?

Mr. Swanser: No, it does not. In fact, it specifically says you must continue to loan even when there's no security left in the property - there's no vote for approval by the people.

REP. FOSTER: **Mr. Swanser**, if you'd look on page 2 of the bill, lines 23-25, then on lines 1 and 2 of page 4 - page 3, excuse me, saying, "the loan must be made by the county whether or not the lien prescribed is adequate or sufficient to secure the loan and whether or not unpaid assessments are outstanding or are to be levied in the district." Could you comment on that, please?

Mr. Swanser: Yes. What the revolving fund statute was before - it was that you would make loans - you would make a loan, when you sold the property you would get repaid for that loan and that's the shortfall. That's what we call the revolving fund. This one says, and Judge Honzel said, you may not require the taxpayers to pick that up if that loan cannot be repaid if the district becomes insolvent. This says that even if it is insolvent, the loan must be made by the county, whether or not the lien prescribed - it says you've got a lien, what good is a lien if it's not a secured lien - is adequate or sufficient to secure the loan - so it says we're no longer going to look to the property to get repaid, we're looking to the taxpayer to get repaid and that's the shifting of the burden in this case.

REP. FOSTER: One final question. **Mr. Swanser**, in your presentation you mentioned something about a constitutional

issue. Is it your position that this bill may be unconstitutional?

Mr. Swanser: I think there's several real constitutional questions left that was commented on by Judge Honzel and are not laid to rest by this bill.

REP. FOSTER: Thank you. Mr. Chairman, I would ask - nobody mentioned the fiscal note at all, that I gathered, in any of the presentation today and perhaps the sponsor of the bill, in his closing, could mention something about the fiscal note if there is anything worth mentioning about it.

REP. ELLIS: Could I address that? Your fiscal note, if you still have the last one I saw on this bill - I didn't pick one up this morning - indicates there's no impact to local government and that is absurd, and the budget department is coming up with a new fiscal note as of yesterday. I kind of thought it would be out but I haven't seen it yet, and the sponsor can tell you that.

Closing by Sponsor:

SEN. KENNEDY: Thank you, Mr. Chairman, and members of the committee, for a good hearing. I'm unaware of a different fiscal note being prepared. Also, I wanted to mention that in the Senate the bill was amended to exclude Carbon County. This bill will assure that necessary 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 to bring a proposal back in 1995. Sen. Bartlett has had drafted a study resolution along these same lines and I will work with her. This may not be a panacea for the revolving funds and SIDs but I think it's absolutely necessary that we pass this bill now and then take a hard study and a hard look at it over the next two years and investigate some of these other states and some of the things they are doing and maybe we can come up with a better way to do this. I would emphasize that no local government is required to create special improvement districts nor sell SID bonds nor secure the bonds with revolving funds. Local governments can decide if they do, or do not want, to secure their SID bonds with revolving funds. I think it is worthy to note here that SIDs and RSIDs should be created on facts and should be based on good business decisions. I think this bill will create the tool and I urge you to pass this bill.

HEARING ON SB 435

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 21, Big Timber, said SB 435 is an act revising the greenbelt appraisal definition of agricultural land

for property tax purposes and requiring that land produce a certain amount in annual gross income in order to be eligible for taxation as agricultural land. The Senate has three grazing bills and SB 435 is the only one still alive. He said there are several issues, one of which addresses the county subdivision review process. The subdivision review and the taxation policy are separate issues. However, both have a 20 acre trigger. Land under 20 acres does not require review. Land over 20 acres is classified agricultural regardless of use. In many cases, counties tax bases are eroding because the agricultural value of the land does not generate enough revenue to meet county expenses. **SEN. GROSFIELD** gave examples of the different appraisals on adjacent parcels in his county and other counties throughout the state. The bill also deals with larger parcels of land that are no longer agricultural land but are classified as such. He distributed a handout prepared by DOR, illustrating on a county by county basis how many parcels there are between 20 and 160 acres, taxable value, and acreage. **EXHIBIT 4** He reviewed the Statement of Intent and distributed a handout covering forestry land. **EXHIBIT 5**

Proponents' Testimony:

REP. SWANSON, HD 79, Bozeman, reviewed a chart listing the status of all the greenbelt bills. **EXHIBIT 6** **REP. SWANSON** said she supports SB 435 because it taxes agricultural land on its production value. Residential property and non-productive land has been stripped of the agricultural designation. She urged the Committee to closely review the greenbelt issues and develop an acceptable compromise bill.

REP. ELLIS, HD 84, Red Lodge, spoke in favor of the bill. He said a parcel of land in his area sold for $80,000 yet the taxes were $6.03 per year for the entire parcel compared to $218 per year for a lot in the town of Red Lodge. He said the division of Montana by subdivision bills is not going to be stopped by tax legislation. He said the economic incentive to divide up Montana is far too compelling to be influenced by a tax bill that might levy a 1% per year tax on the total investment or legal hassles over subdividing.

Lorna Frank, Montana Farm Bureau, said the Farm Bureau was opposed to the bill and hoped with amendments their concerns would be alleviated. They were also concerned with what effect the bill would have on bona fide farmers and ranchers. She said they are reserving judgment at this time.

John Bloomquist, Montana Stockgrowers' Association, appeared in support of SB 435 but said he should be classified as a "no-ponent". He said they have reviewed the various greenbelt bills and agreed with the concept of classifying property for taxation purposes. Amendments should be considered concerning crop rotation, grazing rotation and market conditions.

Opponents' Testimony:

Tom Hopgood, Montana Association of Realtors, spoke in opposition to SB 435. He said this is the sixth greenbelt appraisal bill which has come before the legislature this session and the Montana Association of Realtors vigorously opposes this bill. He said he had computed some quick figures and it appeared to be a 6,000% increase in taxation on rural residential property. Even with a 10-year phase-in period, it would be a 600% increase every year for those 10 years. He said taxpayers in Montana are looking at huge increases in federal taxes and, in one form or another, probably looking at a huge increase in taxes they will pay to the state as a result of this session. As a result, housing could increase. He said the bill would encourage even more subdivisions because a person living on a residential tract of land will be forced to sell off a portion of that land to enable him/her to remain on that land. He said HB 643, which passed the House, represents a good solution to the problem.

Bruce Nelson, Sr., businessman, Great Falls, spoke in opposition to SB 435 and submitted written testimony. **EXHIBIT 7**

Steve Mandeville, Legislative Chairman, Montana Association of Realtors, spoke in opposition to the bill and saying there is a tax inequity in the state. As long as there is a specific dividing line built into the program, that inequity will continue. If the owners of 20 acre land parcels are forced to sell because of high tax rates, the market will overload and Montana 's open spaces will rapidly disappear. High tax rates will force the owners of the 20 acre parcels to subdivide so they might retain some land for themselves.

Mr. Mandeville presented the Committee with a statement in opposition to SB 435. **EXHIBIT 8**

Questions from Committee Members and Responses:

REP. ELLIOTT asked if the income qualifier for agricultural land is still $1500 of production.

Mr. Wilke said that was correct.

REP. ELLIOTT asked if that requirement could be satisfied with a receipt from the sale of livestock.

REP. ELLIOTT said by reading the sheets of the ag land parcels and the forest land parcels in the state, if approximately 30,000 people come to you with tickets for the sale of two fat steers from a livestock auction, would you go out and investigate each one of those?

Mr. Wilke said of all those individuals who come before them with proof of income he suspected they would not investigate each and every one. He said they would initially try to gain information from each operation and from then on to try to mitigate that as much as possible by receiving information on assessment forms or other devices.

REP. DRISCOLL asked what happens in the case of a crop failure and no insurance?

Mr. Wilke said the bill attempts to address that situation in section 2(b) on page 21.

REP. DRISCOLL asked if the bill mandates certification at $5 per acre for every piece of land that generates $1780 worth of product.

Mr. Wilke said he had interpreted the bill that way. The county appraisal staff would be charged with the certification.

REP. REAM asked if all land parcels from 20 - 160 acres would be taxed at the full residential rate.

SEN. GROSFIELD said that is correct. The 10-year phase-in does not apply to acreage larger than 160 acres.

REP. REAM said one of the reasons we have this problem is the huge discrepancy between residential property and agricultural land. If this bill passes, there would be a huge windfall in some counties because of the increase in property taxes on those parcels. He asked if this would be offset by a decrease in residential value for all the property in that county?

SEN. GROSFIELD said he did not believe it would.

Closing by Sponsor:

SEN. GROSFIELD said it was very difficult to come up with a formula that works doe everyone. He acknowledged the concerns of the agricultural community. His intention is not to impact anyone that is legitimately engaged in agricultural production, rather he wants to address the issue of non-agricultural landowners being subsidized by the rest of the county. He said amendments are being prepared for the Committee to look at in Executive Session. He pointed out that the 20 acre lower limit was adopted in the 1986 Special Session. In his county there were about 5,000 acres that had been subdivided and they had each been paying about $750 in taxes. Overnight, because of the 20 acre limit, tax collection were reduced to approximately $3.50 per parcel. He said he did not agree with the comment that this might encourage subdivisions. There could be an instance here or there, but he did not believe it would happen often. People buy

the 20-acre parcels because they want some space. He hoped the annual certification would not become a bureaucratic nightmare as some opponents predicted. He said he kept coming back to the fact that the rest of us, city and rural taxpayers, are subsidizing through higher taxes the people that are buying these parcels.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:55 a.m.

Mike Foster for Bob Gilbert
REP. BOB GILBERT, Chairman

Jill Rohyans
JILL ROHYANS, Secretary

These minutes were written by Louise Sullivan and edited and proofed for content by Jill Rohyans.

BG/jdr/ls

Rm 437

HOUSE OF REPRESENTATIVES

Taxation COMMITTEE

ROLL CALL DATE 4/2/93

NAME	PRESENT	ABSENT	EXCUSED
Bob Gilbert	✓		
Mike Foster	✓		
Sheill Anderson	✓		
John Bohlinger	✓		
Ed Dolezal	✓		
Jerry Driscoll	✓		
Jim Elliott	✓		
Mary Ireland	✓		
Marion Hanson	✓		
Hal Harper	✓		
Dan Harrington	✓		
Chase Hibbard	✓		
Vernon Keller	✓		
Ed McCaffree	✓		
Bea McCarthy	✓		
Jon Nelson	✓		
Scott ORR	✓		
Bob Raney	✓		
Bob Ream	✓		
Rolph Tunby	✓		

D.A. Davidson & Co.
INCORPORATED Member SIPC

Great Falls: Davidson Bldg., 8 Third St. No. • P.O. Box 5015
Great Falls, MT 59403 • (406) 727-4200 • 1-800-332-5915

EXHIBIT 1
DATE 4/2/93
SB 426

House Taxation Committee

April 2, 1993

Mr. Chairman and Members of the Committee:

I believe Senate Bill 426 attempts to do two things. First the bill clarifies and institutionalizes the provisions under which local governments, underwriters, investors and legal counsel believe they have been preceding for the last 50 years. Secondly, this bill provides, for the first time, a date certain by which the revolving fund obligation sunsets.

These clarifications are necessitated by the District Court's ruling in the Carbon County case which essentially provides that an issuer does not have to loan from the revolving fund if the special improvement district is insolvent. What does insolvent mean? Who determines insolvency? Must the issuer pursue the tax sale process first?

There are a host of questions which were introduced by this ruling which we believe materially impairs the marketability of special improvement bonds in the State of Montana. It is our opinion that without this legislation SID Bonds will not be readily marketable. Without SID's local governments will lose not just one vehicle for financing infrastructure, but many times the only vehicle for infrastructure financing. It is difficult to imagine who would buy special improvement bonds with the uncertainty surrounding the availability of the revolving fund to support these bonds.

Without the revolving fund available for payment on a special improvement district issue, the issue may go into default with the delinquency of one taxpayer within a district. The revolving fund provides an additional source of security for payment on the Bonds in addition to the special assessments. From an investors standpoint, either the revolving fund is pledged for the life of the issue or it is not. Traditionally, investors will not buy bonds which do not bear an unqualified legal opinion of qualified bond counsel. Subsequent to the ruling by the District Court regarding Carbon County, bond counsel is unable to express an unqualified legal opinion on special improvement district bonds. Counsel is unable to express an opinion on the enforceability of the revolving fund at all. Without such an opinion and given the practical uncertainty regarding the availability of the security as provided by a pledge of the revolving fund, investors will not provide ready access to the capital marketplace for local governments.

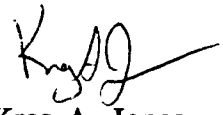
It is critically important to understand that no one may force a local government to pledge the revolving fund. Since 1983, local governments have had the option of pledging the revolving fund to SID's; however, historically they have always had the option of whether or not to create an SID at all. This bill attempts to provide clarity to the long-standing understanding that once the local government has pledged the revolving fund a limited amount of funds will be available to provide payment of principal

and/or interest to the bondholders in the event of delinquencies from the payment of special assessments. Again, without the revolving fund any delinquency would result in an automatic default on the bonds.

There has been much discussion regarding the retroactivity of this bill. The basic question is certainly why is retroactivity needed. It is critically important to understand that these bonds are sold to individual investors in the State of Montana. Most buyers of future SIDs will be those investors which own SIDs sold in the past. It will be impossible for those investors to determine why one investment made in the past is now illiquid and arguably does enjoy the support of the revolving fund, while the future issue will indeed enjoy the support of the revolving fund. Why would we draw a distinction between future bonds and past bonds when in the minds of the issuers of these bonds, the provisions contained in this bill are exactly those which were represented to them by local governments at the time of the acquisition of the investment.

While it might be easy to say let the buyer beware, I would like to make two substitive points regarding that issue: 1) Those buyers of these bonds are our next door neighbors; they are Montanans who are investing their savings in municipal bonds which provide loans to local government for infrastructure improvements. 2) Unless this legislation is enacted we do not believe there will be any buyers to be aware.

This legislation will restore this important financing mechanism to local governments. We strongly encourage passage of Senate Bill 426.



Kreg A. Jones
Vice President
D.A. Davidson & Co.

EXHIBIT 2
DATE 4/2/93
SB 426

MR. CHAIRMAN/MEMBERS OF THE COMMITTEE:

MY NAME IS SHELLY LAINE, AND I AM THE DIRECTOR OF ADMINISTRATIVE SERVICES FOR THE CITY OF HELENA. THE HELENA CITY COMMISSION SUPPORTS SB426. AS OF MARCH 1, 1993 WE HAD OVER $4.4 MILLION IN OUTSTANDING SID BONDS. IT HAS BEEN A VALUABLE FINANCING TOOL IN THE PAST. WITH DEVELOPMENT STARTING TO REKINDLE, WE HAVE DONE A FEW ISSUES RECENTLY AS WELL. WITHOUT THIS LEGISLATION, THE FUTURE OF SID BONDS AS A FINANCING TOOL IS UNCERTAIN AT BEST. THE TIMING IS UNFORTUNATE GIVEN THE RECENT BURST OF DEVELOPMENT.

SINCE THE CARBON COUNTY DECISION, WE HAVE TRIED TO LAUNCH AN SID. WE WERE TOLD BY ONE BOND COUNSEL FIRM THAT THEY WOULD NOT WORK ON THE DEAL UNLESS THIS LEGISLATION PASSED. ALL OTHERS STATED THAT THEY WOULD BE BOND COUNSEL, BUT IF SB426 DIDN'T PASS, THE ODDS THAT THE BONDS WOULD SELL, PARTICULARLY UPON FAVORABLE TERMS, WERE UNCERTAIN. FINANCIAL ADVISORS TOLD US THAT AS WELL. ONE SAID THAT THE FIRM WOULD NOT BID ON BONDS UNLESS THIS LEGISLATION PASSED, AND THEREFORE DIDN'T FEEL COMFORTABLE ACTING AS FINANCIAL ADVISOR PARTICULARLY IN THE MARKETING PHASE.

ITS CLEAR TO SEE FROM THIS EXAMPLE THAT THIS LEGISLATION IS CRUCIAL. NOT ONLY FOR FUTURE SIDS BUT FOR PRESENT ONES AS WELL. FOR THE $4.4 MILLION THAT IS OUTSTANDING, THE CITY NEEDS TO BE ASSURED THAT THE REVOLVING FUND CAN BE USED AS SECURITY IN THE EVENT THE SID PAYMENTS ARE NOT MADE ON TIME. WE HAVE MADE THIS PROMISE TO OUR BONDHOLDERS AND WOULD SINCERELY LIKE TO KEEP THAT PROMISE. WITHOUT THIS LEGISLATION, IT APPEARS THAT A TAXPAYER MAY BE ABLE TO STOP THE CITY FROM USING AVAILABLE FUNDS WITHIN OUR SID REVOLVING FUND TO ENSURE PAYMENT ON THE BONDS.

THE AMENDMENT INCLUDED IN SECTION 10 OF THE BILL DOES CONCERN US. WE ARE EXPECTING AN SID IN AN OLDER SECTION OF HELENA WHICH IS DEVELOPED BUT NOT PAVED. THIS SECTION WAS NOT SUBJECT TO THE SUBDIVISION AND PLATTING ACT AS IT WAS DEVELOPED PRIOR TO THE ACT. IT APPEARS THAT THIS SECTION MAY PRECLUDE US FROM DOING AN SID IN THAT AREA. WE WOULD LIKE TO SEE THAT SECTION AMENDED IN SOME WAY.

THANK YOU.

DONEY, CROWLEY & SHONTZ

Ted J. Doney
Frank C. Crowley*
John M. Shontz **
Albert W. Stone, *of Counsel* ***

Attorneys at Law

Power Block Bldg., Suite 300
Sixth & N. Last Chance Gulch
P.O. Box 1185
Helena, Montana 59624
(406) 443-7018
Fax: (406) 449-8443

House Taxation Committee

EXHIBIT #3
DATE 4-2-93
SB-426

April 2, 1993

The Honorable Bob Gilbert, Chairman
Taxation Committee
House of Representatives
Capitol Station

RE: Senate Bill 426

Dear Representative Gilbert,

The Carbon County Commissioners oppose Senate Bill 426. This bill was introduced as the result of a lawsuit that Carbon County recently won in district court. The lawsuit and the bill addresses the extent of county taypayer's obligations to pay off bonds in the event a RSID or an SID becomes totally insolvent. A copy of the judge's decision in the case is included as Exhibit 1.

In his opinion, Judge Honzel wrote that the county commissioners do NOT have to levy taxes on every taxpayer in the county to pay off the bonds from an insolvent SID or RSID. Senate Bill 426 reverses the judge's decision.

Under Senate Bill 426 the commissioners would be required to levy taxes on all property in the county to pay off the bonds issued on an insolvent SID or RSID. In other words, the bill essentially requires that every SID or RSID bond issue, good or bad, be guaranteed by every taxpayer in the county rather than being guaranteed by the project or it's developers. Under Senate Bill 426 the bond holders will have basically little risk of loss even though the bond, in Carbon County's case, clearly states that the bonds shall not be a general obligation of the county. Note Exhibit 2.

In a nutshell, today a county has the option to establish a revolving fund and assess up to five percent of the total outstanding principle balance of outstanding bonds against taxpayers in the county. The revolving fund is used to make loans to SIDs and RSIDs when the SIDs and the RSIDs are temporarily short the cash necessary to make the payments to the bondholders. When the SID or the RSID collects income from the property in the district, then the RSID or the SID repays the revolving fund. The system works well until...

The SID or the RSID becomes insolvent (broke). At that point, the five percent revolving account is no longer making a loan because the money can never be repaid.

Carbon County asked the district court if the county commissioners were obligated to continue to assess all taxpayers in the county into infinity in order to retire bonds when no hope of recovery of the county's loans to the revolving fund exist. The judge said no. The revolving fund is a cash flow mechanism that makes loans; THE REVOLVING FUND IS NOT A GUARANTEE FUND FOR BONDS.

The proponents of this bill have stated in past testimony that this bill is designed to merely clarify their historical assumption that the revolving fund was, in fact, meant to guarantee bond issues in an ongoing manner. Are these folks are changing their position on this bill? Enclosed is a letter from one of the bill's supporters made in 1981 before this Legislature. Exhibit 3. The letter states, unlike their current contention and the actual effect of Senate Bill 426, the revolving fund does not constitute a debt of the issuing entity and is therefore not a general obligation of the entity's taxing powers. Are the proponents of SB 426 now changing their minds?

We further note that the bill requires counties to levy on all property in the county in order make payments regardless of any other law (including the "cap" on mill levies) without a vote of the people of the county. Page 3, line 24.

We believe that Senate Bill 426 is defective for several reasons. First, the bill is retroactive in its application. The bill would make all county taxpayers the guarantors of millions and millions of dollars worth of currently outstanding bonds issued in the past by converting the revolving loan fund into a revolving guarantee fund.

Second, the bill vacates the current case law by making it clear that the revolving fund, in the future, will effectively guarantee all SID's and RSID's bonds subject to a revolving fund regardless of the success or failure of the underlying projects. Commissioners must, under the bill, make the payments from the revolving fund. The current law gives the commissioners an option. The revolving fund will no longer be a LOAN that county taxpayers provide to assure that bondholder are paid in the event of a district has a temporary cash flow difficulty as the long standing case law has provided in Montana. We include a copy of the key case in this matter as exhibit 4.

In the Carbon County case, it may appear that bond counsel evidently made a legal assumption when it issued opinions covering the millions of dollars of SID and RSID bonds. The court said the bond counsel's assumption was simply wrong. We wonder why bond counsel failed to ask a court in the past (via a declaratory judgment) what the law was on this issue. Should Montana taxpayers, who never had a vote in the creation of an SID or RSID district, be forced to pay because an attorney made a wrong assumption that was negated by a district court.

Although they purchased the bonds with eyes open, one can argue that bondholders should not bear substantial risk if they trusted the accuracy of bond counsel's mistaken opinion. Should not the bond counsel and/or bond underwriters, through insurance or otherwise, make the bondholders whole rather than innocent taxpayers? You ought to know that Carbon County paid the law firm of Dorsey Whitney in excess of $30,000.00 in fees in this matter.

Please note that at the apparent request of bond counsel in the Carbon County case (Dorsey Whitney), Senate Bill 426 was amended to exempt Carbon County from the bill. This was done without Carbon County's approval and was done, we believe, as a part of our opponent's litigation strategy in this court case. The case is currently on appeal to the Montana Supreme Court. If Carbon County is exempted and the bill's retroactive clause is removed (as it should be), then bond counsel's risk of loss on appeal will extend to many millions of dollars worth of bonds rather than just the three million dollars worth of bonds at stake in the Carbon County case. We think litigation strategy belongs in the courts, not in the legislature.

We enclosed several items for your consideration, First is a statement from the Yellowstone County Commission which states the issues in this bill very simply and clearly. Exhibit 5.

Second, we enclose two statements from Ward Swanser, counsel for Carbon County in this matter and the prospectus. Exhibit 6.

Third, we enclose a portion of a letter from Ward Swanser that questions the constitutional concerns this bill raises. Exhibit 7.

Fourth, we enclose a page from a letter from bond counsel in the Carbon County case exempting the project owners from liability for the bonds even thought the project owners had previously been required to personally assure bondholders that the bonds would be paid for at least the first eight years of the bonds' lives. Exhibit 8.

We understand that Senator Bartlett is introducing a study resolution to cover this matter. We urge you to support that resolution so that this issue can receive a detailed visit by the Legislature.

We also understand that a new fiscal note is being prepared for this bill. We understand that the new fiscal note will properly address the actual costs of this bill.

We ask that you vote a do not pass on Senate Bill 426.

Sincerely,

John M. Shontz

EXHIBIT #3
DATE 4-2-93
SB-426

MONTANA FIRST JUDICIAL DISTRICT COURT

COUNTY OF LEWIS AND CLARK

* *

CARBON COUNTY,

Plaintiff,

vs.

DAIN BOSWORTH, INCORPORATED, a Delaware corporation; D.A. DAVIDSON & CO., INC., a Montana corporation; PIPER, JAFFRAY & HOPWOOD, INC., a 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.

Cause No. CDV-90-1196

MEMORANDUM AND ORDER

RECEIVED FEB 5 1993

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

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

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:

"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

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

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 Bondholders 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 # 3
4-2-93
SB-426

This Bond is payable from the collection of a special tax or assessment which is a lien against the real estate within said Rural Special Improvement District, as described in said resolution hereinbefore referred to, and is not a general obligation of the County.

The principal installments represented by this Bond are redeemable at the option of the County at any time there are funds to the credit of the Rural Special Improvement District No. 9 Fund for the redemption thereof, and in the manner provided for the redemption of the same. The date of redemption shall be fixed by the County Treasurer, who shall give notice, by publication once in a newspaper published in Red Lodge, Montana, or, at the option of the County Treasurer, by written notice to the holders of such Bonds at their addresses shown on the bond register, of the numbers of the principal installments and Bonds to be redeemed and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, on which date to fixed interest shall cease. Upon the partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered holder without charge, representing the remaining principal installments outstanding.

As provided in a resolution adopted by the Board of County Commissioners on August 30, 1984 (the Bond Resolution) and subject to certain limitations set forth therein, this Bond is transferable upon the books of the County at the principal corporate office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the County will [redacted] or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer.

The County and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the County nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the County of Carbon, Montana, relating to the issuance thereof.

$1,025,000 RURAL SPECIAL IMPROVEMENT DISTRICT NO. 9 BONDS
COUNTY OF CARBON, MONTANA

We have acted as Bond Counsel in connection with the issuance by the County of Carbon, Montana (the County), of its Rural Special Improvement District No. 9 Bonds (the Bonds), in the aggregate principal amount of $1,025,000, originally dated and registered as of August 1, 1984, and maturing January 1, 2000, payable solely from the Rural Special Improvement District No. 9 Fund of the County (the Fund). The Bonds are issuable in fully registered form, and each of the Bonds represents one or more principal installments of the issue and is issuable in any denomination which is an integral multiple of $5,000 within a single basic interest rate. Additional interest on the Bonds is represented by and payable in accordance with separately registered additional interest certificates. The Norwest Capital Management & Trust Co., Montana, in Billings, Montana, 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 Bonds bear basic interest from date of registration until paid in full or called for redemption at the rates per annum set forth below opposite the principal installments each represents:

Principal Installments	Rate	Principal Installments	Rate
1-11	7.50%	78-93	11.50 %
12-23	8.25	94-109	11.75
24-35	9.00	110-125	12.00
36-49	9.75	126-140	12.25
50-63	10.25	141-168	12.50
64-77	11.00	169-205	12.625

Basic interest on the Bonds is payable on January 1 in each year, commencing January 1, 1985, by check or draft mailed by the Registrar to the owners of record of the Bonds as such appear 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. All Bonds also bear additional interest at the rate of 11.75% per annum from September 1, 1984 to January 1, 1985, payable on January 1, 1985; and Bonds representing principal installments numbered 41 through 205 also bear additional interest at the rate of 4.75% per annum from January 1, 1985 to January 1, 1986, payable on January 1, 1986. Principal of and interest on the Bonds are payable in lawful money of the United States of America. Whenever there is a balance in the Fund after paying interest due on all Bonds payable therefrom, the County Treasurer is required by law to call for payment and redemption outstanding Bonds or principal installments thereof in an amount which, together with interest thereon to the date of redemption, will equal the amount of the Fund on the redemption date. Notice of such redemption is to be given at least ten days before the date specified for redemption by publication once in a newspaper published in Red Lodge, Montana, or, at the option of the County Treasurer, by mailing to the holder or holders of such Bonds at their addresses appearing in the bond register. Interest on any Bond or principal installment thereof ceases to accrue on the date on which it is called for redemption.

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 on the basis of laws, regulations, rulings and decisions in effect on the date hereof, it is our opinion that:

1. The County has validly created Rural Special Improvement District No. 9 (the District), provided for the construction of various improvements of special benefit to the District and has covenanted to levy assessments for the cost of the improvements, estimated at $1,025,000, against each assessable lot or parcel of land within the District, which assessments are to be payable in equal annual installments of principal, with interest on the balance of the special assessments remaining unpaid.

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 rural 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 Fund, in amounts sufficient to make good any deficiency in the 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, 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 103(c) of the Internal Revenue Code of 1954, as amended, and the Treasury Regulations promulgated thereunder.

5. The 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. We express no opinion as to the exemption from taxation of the interest represented by the additional interest certificates.

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

DORSEY & WHITNEY

201 Davidson Building
Great Falls, Montana 59401

2200 First Bank Place East
Minneapolis, Minnesota 55402

We certify that the above is a full, true and correct copy of the legal opinion rendered by Bond Counsel on the issue of Bonds of the County of Carbon, Montana, which includes the within Bond, dated as of the date of delivery of and payment for the Bonds.

Tony A. Zupan
County Clerk

Bob Rowland
Chairman of Board of County Commissioners

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT _____ Custodian _____
(Cust) (Minor)

Under Uniform Gifts to Minors Act _____
(State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

_____

_____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

_____

attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

_____

SIGNATURE GUARANTEE

_____

Signature(s) must be guaranteed by a commercial bank or trust company or by a brokerage firm having a membership in one of the major stock exchanges.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

UNITED STATES OF AMERICA
STATE OF MONTANA

NUMBER
R-

COUNTY OF CARBON

DOLLARS

RURAL SPECIAL IMPROVEMENT DISTRICT NO. 9 BOND

Basic interest at the rate per annum specified below and additional interest for the limited period hereinafter described at the rate per annum specified below
Payable on January 1, 1985 and annually thereafter
Issued by the County of Carbon, Montana

PRINCIPAL INSTALLMENT NOS.	BASIC RATE	MATURITY	DATE OF ORIGINAL ISSUE
		JANUARY 1, 2000	AUGUST 1, 1984

REGISTERED
OWNER:

SEE REVERSE
FOR CERTAIN
DEFINITIONS

SPECIMEN

PRINCIPAL
AMOUNT: DOLLARS

The County Treasurer of Carbon County, Montana, will pay to the registered owner specified above or registered assigns, the principal amount specified above, as authorized by a resolution passed on the 30th day of August, 1984, creating Rural Special Improvement District No. 9 for the construction of certain improvements for the benefit of the District as authorized by said resolution, and all laws, resolutions, and ordinances relating thereto, in payment of the contracts in accordance therewith. Basic interest on and, upon presentation and surrender hereof at the principal corporate office of the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of Norwest Capital Management & Trust Co., Montana, of Billings, Montana, as bond registrar and paying agent, or its successor designated under the Bond Resolution described herein (the Registrar). The principal of and interest on this Bond are payable in lawful money of the United States of America.

This Bond represents one or more principal installments of an issue of bonds of the County numbered as set forth above. The principal installments for the issue are in the aggregate principal amount of $1,025,000, and are numbered from 1 through 205, each in the principal amount of $5,000.

This Bond bears interest at the basic rate per annum specified above from August 1, 1984, or from the most recent interest payment date to which interest has been paid or duly provided for, until the date called for redemption by the County Treasurer, and also bears additional interest as hereinafter specified.

Basic interest on this Bond is payable annually, commencing January 1, 1985, on the first day of January in each year, through January 1, 2000 unless this Bond is paid previous thereto, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the 15th day (whether or not such is a business day) of the immediately preceding month. All Bonds also bear additional interest at the rate of 11.75% per annum, from September 1, 1984 to January 1, 1985, payable January 1, 1985, and Bonds representing principal installments numbered 41 through 205 bear additional interest at the rate of 4.75% per annum, from January 1, 1035 to January 1, 1986, payable January 1, 1986, unless such Bonds are paid previous thereto. Additional interest hereon and on all such other Bonds is represented by and payable in accordance with separately registered additional interest certificates, which bear the engraved facsimile signatures of the Chairman of the Board of County Commissioners and the County Clerk and Recorder.

Additional provisions of this Bond are contained on the reverse hereof and such provisions shall for all purposes have the same effect as though fully set forth hereon.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication and Registration hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Bonds delivered pursuant to the Bond Resolution mentioned herein.

NORWEST CAPITAL MANAGEMENT & TRUST CO., MONTANA
as Registrar

By
Authorized Representative

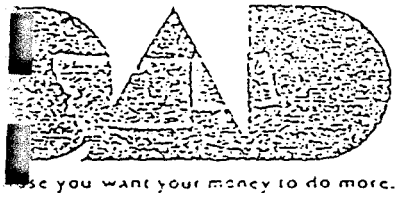
COUNTY OF CARBON SEAL COUNTY CLERK MONTANA

Dated:

COUNTY OF CARBON, MONTANA

Tony A. Zupan
County Clerk

Bob Rowland
Chairman of Board of County Commissioners



se you want your money to do more.

EXHIBIT #3
DATE 4-2-93
SB-426

D.A. Davidson & Co.
Incorporated

Montana's Oldest Investment Firm

P.O. Box 5015
Davidson Building
Great Falls, Montana
59403

(406) 727-4200

Offices: Billings, Bozeman, Butte, Havre, Helena, Kalispell, Missoula, Montana; Williston, North Dakota

Corporate Office:
Davidson Building
Great Falls,
Montana 59401

Members:
Midwest Stock Exchange Inc.
Pacific Stock Exchange Inc.
Securities Investor Protection Corp.

ruary 17, 1991

ate Taxation Committe
pitol Building
ena, Montana 59601

: Senate Bill No. 382

. Chairman and Members of the Committee:

A. Davidson & Co. opposes the amendments proposed by Senate Bill o. 382 on the grounds that such amendments are unnecessary, would verely impair the marketability of special improvement district nds and would inhibit development of commercial and residential roperty within the State.

e amendments contained in Sections 1 and 4 of the bill are unnecssary since the Supreme Court has recognized since 1941 in the case f City of Havre vs. Henssen that special improvement district bonds r which a revolving fund is pledged do not constitute a debt of he issuing entity and therefore does not constitute a general obliation of that entity's taxing powers.

e amendments contained in Sections 3 and 6 of the bill would so mpair and burden the ability of counties and cities to use revolng funds as security for improvement district bonds as to effecvely remove the use of revolving funds altogether. D.A. Davidson & Co. underwrites approximately 90% of all improvement district onds issued within the State. Without the revolving fund Montana mprovement District Bonds would not be purchased by D.A. Davidson & o. due to the fact that if a property owner were to fail to pay an assessment, the bonds would default. The rationale for our refusal o purchase is based on the fact that there is no other source of nds to cure such a delinquency and there can be no resort to the property of the delinquent taxpayer for more than three years.

ithout tax-exempt financing of the development of property, conventional higher cost financing must be used. As a result the property ill either remain undeveloped, only partially developed or the igher cost will be passed on to the purchaser. This impairs development and growth in the State which, in our opinion, is contrary to the State's best interest.

Finally, it is our opinion that there has been introduced legislation which would strengthen Improvement District Financing, provide funds to the revolving fund without resort to the general taxpayer and penalize abuses of the revolving fund concept. Senate Bill No. 96 provides that the revolving fund for cities could be capitalized directly from bond proceeds rather than resorting to the general ad valorem tax. Senate Bills No. 280 and 42 would impose penalties on those who are delinquent in their assessment payments at a rate which would encourage payment or borrowing from a source other than the revolving fund. These Bills would enhance the improvement district bonds rather than effectively eliminate the method of financing.

We respectfully request a do not pass recommendation on Senate Bill No. 382.

Sincerely,

Bruce A. MacKenzie
Vice President & General Counsel

BAM:als

[illegible] we are concerned with, therefore, is not whether Wilson was defendants' agent, for he was not physically handling the car; but whether Doyle, the driver, was their agent for the purpose. Wilson's relationship to them is therefore not the issue, whatever bearing it may have upon it.

[3, 4] Furthermore, the defendants are the moving parties here, and the question is not whether the driver has been proven to be their agent, but whether he has been proven not to be their agent, which must be established by them in order to prove that the case is not within the class in which service may be made under the statute in question, and therefore to entitle them to have the service quashed. Certainly, if there is any evidence from which the trial court could properly find that the agency relation existed, it cannot on account of a conflict in the evidence be placed in error for so doing.

[5] The question thus resolves itself to this: Is there an entire absence of any credible evidence indicating that the driver at the time of the accident was an agent of the defendants? Looking back at the testimony of Wilson, upon whom they rely to disprove the agency, we find that it was the defendant Gallagher who wanted the men taken to Chicago and who made the arrangements for the trip, including the suggestion of their help in driving East; that after the accident Wilson called Gallagher to find out what to do with the men; that Wilson paid the expenses of the others en route to Bozeman, although he contended that it was not with Gallagher's money. His personal payment of their expenses hardly comports with his testimony that he took them in order to save money for himself on the trip; and he had some money and a check for $175 given him by Gallagher which, according to Morris, he said was Gallagher's and was to pay the expenses on the trip, although he himself denied the statement. There are a number of things left unexplained by his testimony, including the circumstance that although he bought the car for $850, paying $250 down and owing a $600 balance, he himself had a credit balance of some $300 on deposit with Gallagher in addition to approximately $250, $175 of which was in a check from Gallagher and which he insisted represented his own savings previously deposited with Gallagher. His complete ignorance as to the purpose why Gallagher wanted the other five taken East is also a little remarkable. His relation to Gallagher was left quite shadowy by his testimony; but there must have been some substantial arrangement, since to accommodate Gallagher he agreed to go from Bremerton to Salina, Kansas (about 1,400 miles in a straight line), via Chicago, (making it about 2,400 miles by two straight lines), thus almost doubling the distance. Whether Wilson's relationship to the defendants, if material, was as agent or independent contractor is not apparent from the record, and it certainly cannot be held as a matter of law to have been proven at the hearing that he and the others who operated the car, and especially George Doyle who was operating it at the time of the accident, were not the defendants' agents. Gallagher made three affidavits and had ample opportunity to explain away the apparent fact that Doyle and all of the others with the possible exception of Wilson were making the trip solely on defendants' business, but he very pointedly refrained from reference to the matter, or to the Illinois license plates which were found in the car. It seems clear, therefore, that we cannot find the trial court manifestly in error for its refusal to quash the service on that ground.

[6, 7] The other question is that of the legislative intent in enacting the statute. Defendants urge that it is intended "solely for the benefit of resident plaintiffs against nonresident defendants," but they have referred us to nothing in the act, and we find nothing therein, indicating such an intent. They urge that the statute is in derogation of the common law and thus is to be strictly construed, citing several decisions from other jurisdictions in support of the contention. But that argument cannot be applicable in Montana, for section 4, Revised Codes, provides: "The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the codes or other statutes of the state of Montana. The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice."

[8, 9] It seems clear to us that the object of the act is to further the safety of highway traffic within the state and afford a practicable remedy for damage arising from negligence on the highways, by providing for service of summons within the state where it would otherwise be impossible, or virtually so. The act cannot be construed liberally to effect that object by limiting its application to plaintiffs resident in Montana, and in absence of a direct provision in the act to that effect, we cannot impute to the legislature an intent to discriminate in favor of resident plaintiffs and against nonresident plaintiffs. Ordinarily the better place for suit is where the accident occurred and where usually the evidence, physical and otherwise, will be available. If the plaintiffs had been residents of North Dakota, there would be no more reason why they should be compelled to go to Washington to sue than if they had been residents of Montana. There might be some reason where, as here, both plaintiffs and defendants were residents of Washington, but if so that is a matter of policy for the legislature to decide. In any event it seems clear from this analysis that the real question of policy arising from the circumstances of these cases is not that the plaintiffs are nonresidents of Montana, but rather that they happen to be residents of the same state as the defendants; and even assuming that the court might read into the statute an intention to protect only residents as distinguished from nonresidents, it is obviously not possible to read into it an intent to protect all but residents of the same state as the defendants, or all but residents living closer to the defendants' state than to Montana.

Not being able to construe the statute as inapplicable to nonresident plaintiffs, nor to find it definitely proven that the operator of the automobile at the time of the accident was not defendants' agent, we must deny the writs prayed for herein, and it is so ordered.

ANGSTMAN, ERICKSON, and ANDERSON, JJ., concur.

MORRIS, Justice (dissenting).

I dissent.

I do not think the evidence sufficient to establish the fact that the car was operated by an agent of the defendants at the time of the accident.

HANSEN v. CITY OF HAVRE et al.

No. 8217.

Supreme Court of Montana.

June 16, 1941.

1. Courts ⇐209(2)

Where original proceeding for injunction was instituted in the Supreme Court, and defendants appeared by general demurrer, pure questions of law were presented.

2. Municipal corporations ⇐864(4)

The possibility that part of bonds issued by special improvement district may have to be paid with moneys obtained from revolving fund which in turn is created by tax levy on property of the city does not mean that the bonds create a "city debt" within constitutional provision fixing debt limitation, since plan is merely an arrangement whereby the city, through the revolving fund, loans money to the district. Rev. Codes 1935, § 5277.1 et seq.; Const. art. 13, § 6.

See Words and Phrases, Permanent Edition, for all other definitions of "City Debt".

3. Municipal corporations ⇐864(4)

Agreement by city council with Reconstruction Finance Corporation that city would, to extent permitted by law, issue orders authorizing loans from revolving fund to special improvement district in amount sufficient to make good any deficiency in bond and interest accounts of such improvement district did not cause bonds to become an indebtedness of the city within constitutional provision fixing "city debt" limitation. Rev.Codes 1935, § 5277.1 et seq.; Const. art. 13, § 6.

4. Newspapers ⇐3(4)

Where notice of intention to create special improvement district was published on each day from Tuesday to and including Saturday of the same week, which constituted all the publications of the paper for a week, the publication satisfied statutory requirement that resolution be published for five days in a daily newspaper, since a newspaper published five days of the week is a "daily newspaper" in the popular sense. Rev.Codes 1935, §§ 5227, 5255.

See Words and Phrases, Permanent Edition, for all other definitions of "Daily Newspaper".

5. Municipal corporations ⇐450(4)

The statute relating to publishing and posting notice of intention to create special improvement district contemplates posting of notice only when publication cannot be made in the city. Rev.Codes 1935, §§ 5227, 5255.

6. Eminent domain ⇐45

The statute authorizing city to condemn private property for constructing any sewer, waterway or drain ditch outside of corporate limits, or for any other municipal and public use authorizes the city to condemn private property outside of municipality for municipal and public use. Rev.Codes 1935, § 5039.74, as amended by Laws 1937, c. 180.

7. Eminent domain ⇐31

Condemnation of property by city as part of flood control project under which city would divert flood waters into channel, where it would not injure city, was authorized by statute empowering city to condemn property for a "waterway or drain ditch" or for any other "municipal and public use". Rev.Codes 1935, § 5039.74, as amended by Laws 1937, c. 180.

See Words and Phrases, Permanent Edition, for all other definitions of "Municipal and Public Use" and "Waterway or Drain Ditch".

8. Municipal corporations ⇐277

Generally, a city cannot make improvements outside of its own limits unless authority to do so is either expressly or by necessary and fair implication conferred, but authority to act beyond its boundaries may be implied on grounds of special necessity.

9. Levees and flood control ⇐23

The property of special improvement district created within city could be assessed for improvements made without the city or to pay for condemned property without the city as part of plan to control flood waters within the district. Rev.Codes 1935, § 5226.

10. Constitutional law ⇐232
Municipal corporations ⇐887

The statute providing for creation by cities of special improvement district revolving fund does not deny "equal protection of the laws" as applied to districts created for carrying out flood control project designed to control flood waters within the district, though project is partially without the city. Rev.Codes 1935, §§ 5277.1 to 5277.5; U.S.C.A.Const. Amend. 14, § 1.

See Words and Phrases, Permanent Edition, for all other definitions of "Equal Protection of the Law".

11. Statutes ⇐94(2)

The statute providing for creation by city of special improvement district revolving fund is not void as a "special law" because not providing protection by general law for all holders of all classes of municipal bonds in default, though part of project for carrying out improvement within the city, is outside the city. Rev.Codes 1935, §§ 5277.1 to 5277.5; Const.Mont. art. 5, § 26.

See Words and Phrases, Permanent Edition, for all other definitions of "Special Law".

12. Municipal corporations ⇐870

The statute providing for special improvement district revolving fund and for loans to such fund from general fund of city is not violative of constitutional prohibition against loaning of city's credit to an individual, association or corporation, though part of project to carry out improvement within the city is located outside the city. Rev. Codes 1935, §§ 5277.1 to 5277.5; Const.Mont. art. 13, § 1.

13. Municipal corporations ⇐957(1)

The statute providing for creation by cities of a special improvement district revolving fund for purpose of making loans to improvement district does not levy tax for "private purposes" within constitutional prohibition, though part of project in furtherance of improvement within city is located outside the city. Rev.Codes 1935, §§ 5277.1 to 5277.5; Const.Mont. art. 12, § 11.

See Words and Phrases, Permanent Edition, for all other definitions of "Private Purposes".

14. Constitutional law ⇐143
Municipal corporations ⇐907

The statutory provision that whenever a loan is made by city to any special improvement district fund from revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and on all moneys thereafter coming into such district fund, does not "impair the obligation of contract" in a constitutional sense to bondholders, since the lien provided by statute is merely a plan by which revolving fund may be reimbursed and statute does not contemplate that security of bondholders should in any way be impaired. Rev.Codes 1935, § 5277.4; U.S.C.A.Const. art. 1, § 10.

See Words and Phrases, Permanent Edition, for all other definitions of "Impair Obligation of Contract".

15. Statutes ⇐227

The word "may" as used in a statute means "must" or "shall" depending on the apparent legislative intent.

See Words and Phrases, Permanent Edition, for all other definitions of "May", "Must" and "Shall".

16. Municipal corporations ⇐232

Under statute providing that when there is not sufficient money in special improvement district fund to pay bonds or interest, an amount to make up the deficiency may by order of city council be loaned by revolving fund to such district fund, agreement by city that it would issue orders that loans from revolving fund be made to special improvement district created in connection with flood control project, to make good any deficiency in bond and interest account, was not invalid as an attempt to bind successors in office as to a discretionary matter, since "may" within statute meant "must" or "shall", and statute imposed mandatory duty on city council to use fund for purpose intended. Rev.Codes 1935, § 5277.3.

17. Municipal corporations ⇐460, 917(1)

Interest could properly be considered as part of cost of improvement for which special improvement district might levy assessments, and city, in resolution for issuance and sale of district bonds, was authorized to fix a definite rate of interest within limits specified by statute. Rev.Codes 1935, § 5249, as amended; Laws 1937, c. 23.

Original proceeding for injunction by Elmer F. Hansen against the City of Havre, Montana, and others to restrain defendants from carrying out proposed flood control project and issuing proposed bonds.

Injunction denied.

Oscar C. Hauge, of Havre, for appellant.

Peter M. Rigg, of Havre, for respondents.

ANGSTMAN, Justice.

This is an original proceeding in this court for an injunction. The complaint sets out that the governing body of the defendant city created special improvement district No. 179 in the city of Havre for the purpose of constructing a diversion dam and necessary appurtenances, some within and some without the city limits, for the purpose of protecting the city from injury by the overflow of water from Bull Hook Creek and Scott Coulee; that the entire estimated cost of the proposed project chargeable against special improvement district No. 179 is the sum of $115,920.

The complaint further sets out that the city council passed a resolution providing for the issuance and sale of special improvement district bonds for the purpose of paying the costs and expenses to be incurred in making the proposed improvements; that the city council also passed and adopted a resolution or ordinance creating and establishing a special improvement district revolving fund, and created three other special improvement districts to take care of the city's share of the cost of the entire flood control project; that of the total cost of said project, $175,000 is the amount which must be paid by all of the improvement districts; that the defendant city applied to the Reconstruction Finance Corporation for a loan for the purpose of aiding it in financing the city's share of the cost of the project and the Reconstruction Finance Corporation has authorized a loan in the sum of $175,000 for such purpose, to be invested by it in the special improvement district bonds; that the city council has agreed with the Reconstruction Finance Corporation that to the extent permitted by applicable law, it would annually issue orders authorizing loans or advances from the revolving fund to any one or more of the four improvement districts, in amounts which would be sufficient to make good any deficiency in the bond and interest accounts of any one or more of the improvement districts.

[1] The resolution creating district No. 179 declares that the purpose of the district in part is to acquire certain necessary real estate and rights-of-way, both within and without the limits of the city of Havre. It is alleged that the defendants threaten to and unless restrained will carry out the plans contemplated by the resolutions and ordinances and will create the proposed project and issue the proposed bonds. It is alleged that the resolu-

tions, ordinances, contract and acts of the defendants are invalid and void, for several reasons which will hereafter be taken up in detail. The complaint seeks to enjoin the carrying out of the project. Facts are alleged showing a necessity for instituting an action originally in this court. The defendants have appeared by general demurrer and hence there are presented to us purely questions of law.

[2] The first question raised is that the proposed bonds will create an indebtedness of the city within the meaning of section 6, Article XIII of the Montana Constitution. That section in part provides: "No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three (3) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void."

The special improvement district revolving fund was created pursuant to sections 5277.1 et seq., Revised Codes. It 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. § 5277.2, Rev.Codes. 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. § 5277.3. And when such a loan is made the revolving fund has a lien as security for the loan. This is provided for by section 5277.4 which provides:

"Whenever any loan is made to any special improvement district fund 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 moneys 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, loa[illegible] mad[illegible] d wh[illegible] r th[illegible] he S[illegible] e C[illegible] tha[illegible] e in shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan shall, by order of the council, be transferred to the revolving fund; and after all the bonds and warrants issued on any special improvement district have been fully paid, all moneys remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund."

And section 5277.5 authorizes any excess funds in the revolving fund to be transferred to the general fund of the city. It also authorizes the use of the excess funds in the revolving fund "for the purchase of property at sales 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." Likewise the proceeds from the sale of such tax certificates or from the sale or rental of properties so acquired shall belong to the revolving fund, and are subject to transfer to the general fund by virtue of section 5277.5. 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.

[3] As above noted, the city council has agreed with the Reconstruction Finance Corporation that it will, to the extent permitted by law, issue orders authorizing loans or advances from the revolving fund to anyone or more of the special improvement districts, in amounts sufficient to make good any deficiency in the bond and interest accounts of such improvement district. 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. The revolving fund arrangement is similar in purpose to a plan in the State of Washington which came before

fort v. City of Tacoma, 142 Wash. 249, 252 P. 929, 931. In that case the contention was made that a similar arrangement amounted to the incurring of a city debt. The court approved the holding in the case of Corey v. City of Ft. Dodge, 133 Iowa 666, 111 N.W. 6, as follows: "Where the city had provided for a special assessment for improvements which contemplated a probable deficiency, the amount thereof could not be considered as being an indebtedness within the meaning of the constitutional limitation."

[4] The next point raised by plaintiff is that the notice of intention to create the special improvement district was not published as the law directs. It was published in the Havre Daily News on each day from Tuesday to and including Saturday of the same week, which constituted all the publications of the paper for a week. The paper has no Sunday or Monday edition. Section 5227 provides that such a resolution "must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town." Section 5255 provides that resolutions required to be published, "shall be published in a daily newspaper or in a semiweekly or weekly newspaper, to be designated by the council of such city, as often as the same is issued during the period specified for said publication, and no other statute shall govern or be applicable to the publications herein provided for; provided, however, that in case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except herein otherwise specifically provided."

The period for publication under section 5227 is five days. The notice was published for five consecutive days. Under section 5255, when publication is in a daily newspaper, the publication shall be "as often as the same is issued during the period specified for said publication." We have no difficulty in reaching the conc[illegible] will [illegible] od c[illegible] ure t[illegible] y. tha[illegible] notice [illegible] intention [illegible] create [illegible] the district was published in the mann required by law. It has been held that newspaper published five days in t week is a daily newspaper in the popul sense. Fairhaven Pub. Co. v. City Bellingham, 51 Wash. 108, 98 P. 97, Ann.Cas. 420. We subscribe to that view

[5] Obviously the intention of the le islature was to permit posting of noti only when publication could not be mad in the city. By using the words "daily "semiweekly" or "weekly" the legislatu made it plain that whenever there is newspaper published in the city, publica tion therein should take precedence ov notice by posting. To hold otherwise w would be obliged to say that one publica tion in a weekly paper would be sufficien and five publications in a newspaper pub lished seven times a week would be suf ficient, whereas five publications in paper published only five times a wee would be insufficient. Such a conclusio is not warranted by reason nor by the leg islative intent gathered from the wordin of the statute.

[6, 7] The next point raised is that sec tion 5039.74, as amended by Chapter 180 Laws of 1937, does not authorize the city to condemn lands either within or withou the city for rights of way for diversion canals, dams and appurtenances to protec the city from overflow. Section 5039.74 as amended, Chapter 180 of the Laws 1937 provides: "The city or town council has power: To condemn private property for opening, establishing, widening, or altering any streets, alley, park, sewer or waterway in the city or town, and for establishing, constructing and maintaining any sewer, waterway or drain ditch outside of the corporate limits of the municipality, or for any other municipal and public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceedings thereunder had as provided in the code of civil procedure concerning eminent domain."

The plan here is to fill in the present bed of Bull Hook Creek passing through the city, which is dry except in times of a flood, and by means of the contemplated project divert flood water from Bull Hook Creek and Scott Coulee into a channel where it

nor less than a "waterway or drain ditch" within the meaning of section 5039.74, as amended. Likewise under that section the city may condemn private property "for any other municipal and public use." This is sufficient statutory authority also to condemn private property outside a municipality for municipal and public use. To protect the inhabitants of the city and their property from flood waters is certainly a project for municipal and public use within the meaning of section 5039.74, Revised Codes.

[8, 9] The next point raised is that our statutes do not permit the assessment of property in a special improvement district within a city for improvements made without the city or for the purpose of paying for condemned property without the city. As above pointed out, the purpose of the project in question is to control the flood waters within the special improvement district. The thing to be accomplished is improvement of conditions within the city and the improvement district. The fact that property must be acquired and the work performed outside the city is but incidental. The property to be benefited is not that outside the city but that within the city and within the improvement district.

Section 5226, Revised Codes, actually contemplates just such a project as the one involved here. It expressly authorizes the creation of an improvement district for the purpose of constructing "walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city." Were express statutory authority lacking, there would still be implied authority to create improvement districts for such a project. The rule is stated in 44 C.J. 184, as follows: "While under the general rule it is generally held that a municipality has no power to make improvements outside of its own limits unless authority to do so is conferred either expressly, or by necessary and fair implication, yet authority to act beyond its boundaries is sometimes implied on grounds of special necessity. It is competent for the Legislature in the absence of constitutional restraint to grant a municipality extra territorial jurisdiction. * * * And such authority may be implied from a general power."

In 5 McQuillin on Municipal Corporations, 2d Ed., section 1969, it is said: "Authority to make improvements beyond the corporate limits is often implied on the ground of necessity, as sewer outlets, or, as it is said, it arises by implication. Improvements relating to a municipal purpose without the municipal area are generally sanctioned, as sewers and drains, parks and water supply." And it has been held that the city may construct a ditch to carry off surface water partly within and partly without the municipal boundaries. In re Town of Woolley, 75 Wash. 206, 134 P. 825.

[10-13] Plaintiff argues that sections 5277.1 to 5277.5 are in conflict with section 1, Article XIII of the Montana constitution in that they authorize a loan of city moneys and credit in aid of special improvement districts for the benefit of holders of bonds of the districts, are prohibited by section 1 of the Fourteenth Amendment to the United States Constitution as denying to plaintiff the equal protection of the laws, contravene section 26, Article V of the Montana Constitution as being special laws, and conflict with section 11, Article XII as authorizing a tax for private purposes.

All of these contentions were made and held groundless in the case of Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 70 A.L.R. 166. But it is contended that the Stanley case involved facts where the improvements to be constructed were entirely within the corporate limits of the city, and, hence, that the case is not controlling here. This contention is without merit. From what we have already said, it is seen that this improvement is within the city though part of the project is without the city. What was held in the Stanley case has equal application here.

[14] Plaintiff's next contention is that section 5277.4 is in conflict with section 10, Article I of the United States Constitution as impairing the obligations of the contracts of the holders of the bonds of the district. Plaintiff contends that the lien of the revolving fund created by section 5277.4 is superior, senior and prior to the lien of the bondholders. This contention cannot be sustained. The only purpose of the revolving fund was to add to the security of the bondholders. It was not the intention of the legislature that the creation and use of the revolving fund should in any way impair the security of the bondholders. The lien provided for by section 5277.4 was merely a plan by which the revolving fund might be reimbursed for loans made to the district out of funds of the district not required for payment of the bonds. This is made clear by the latter part of that section.

[15] The next point raised by plaintiff is that the contract of the city that it would issue suitable orders authorizing loans or advances from the revolving fund to any one of the four districts to make good any deficiency in the bond and interest account is invalid because it attempts to bind the successors in office as to a discretionary matter. Under section 5277.3 it is provided in substance that when there is not sufficient money in the district fund to pay the bonds or interest thereon "an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund." Defendants contend that the word "may" as used in section 5277.3 means "must" or "shall." We think this contention must be sustained. We have often held that "may" means "must" or "shall", depending upon the apparent legislative intent. Montana Ore Purchasing Co. v. Lindsay, 25 Mont. 24, 63 P. 715; State ex rel. Interstate Lumber Co. v. District Court, 54 Mont. 602, 172 P. 1030; Rule v. Butori, 49 Mont. 342, 141 P. 672; State ex rel. Stiefel v. District Court, 37 Mont. 298, 96 P. 337; State v. Dotson, 26 Mont. 305, 311, 67 P. 938; Soliri v. Fasso, 56 Mont. 400, 407-408, 185 P. 322; First National Bank of Helena v. Neill, 13 Mont. 377, 382-383, 34 P. 180; Dryer v. Director General of Railroads, 66 Mont. 298, 300, 213 P. 210.

[16] 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, § 5277.2, 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. 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.

[17] Finally it is contended that interest cannot properly be considered a part of the cost of the improvement. The resolution of intention to create the district, and the resolution creating it, provide for the payment of interest on the proposed bonds as part of the cost of making the improvement at a rate not exceeding six per cent. per annum. The resolution providing for the issuance of the bonds and prescribing their form specifies that the rate of interest shall be six per cent. per annum. The contention is that since section 5249, as amended by Chapter 23, Laws of 1937, specifies that the interest rate shall not exceed six per cent. per annum, it is impossible to fix the rate definitely, and, hence, that interest cannot legally be considered a part of the cost of the improvement and a definite rate fixed. It was proper for the city by resolution to fix the definite rate of interest within the limit specified in section 5249.

Assessments may be made to include interest on money borrowed to make an improvement. 44 C.J. 647; and see State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 87 P.2d 183. Obviously the interest rate of the bonds is an important element considered in their sale, and when the rate was fixed within the limit provided for by statute, there can be no valid objection to including it as a part of the cost of the improvement, warranting the levying of assessments therefor.

Finding no merit in any of the contentions made by plaintiff, the relief sought is denied.

JOHNSON, C. J., and ERICKSON, ANDERSON, and MORRIS, JJ., concur.

EXHIBIT #3
DATE 4-2-93
SB-426

Mike Halligan, Chairman
Senate Taxation Committee
Room 413/415
Capitol Building
Helena, MT 59620

Dear Chairman Halligan and Committee Members:

I have conferred with Yellowstone County Commissioners and our Finance Director regarding Senate Bill No. 426 which is an act revising the laws concerning special Improvement District and Rural Special Improvement District Revolving Funds.

We oppose this Bill for the following reasons:

1. This Bill is an effort to change the Revolving Fund from a temporary loan mechanism to a **TAXPAYER GUARANTY** Fund.

2. This Bill makes taxpayers responsible for district deficiencies since many R.S.I.D. Revolving Fund loans can never be repaid.

3. The Bill does have significant negative potential impact to local taxpayers, since Counties would be required to levy for District debt deficiencies.

4. Bonds for new districts can still be sold, however bond buyers will require more collaterization from the district instead of relying on taxpayer's levy guarantees.

Yellowstone County and the City of Billings has lost **millions** in special assessment delinquencies over the past decade. Special assessment district debt and its ultimate repayment should probably be restructured by the legislature, but not with Senate Bill No. 426. Senate Bill No. 426 is a knee-jerk reaction to the Carbon County judgement and places liability with taxpayers where it was never intended.

We **OPPOSE** Senate Bill No. 426.

BOARD OF COUNTY COMMISSIONERS

Mike Mathew, Member

BOARD OF COUNTY COMMISSIONERS

Bill Kennedy, Member

Merrill H. Klundt
Clerk and Recorder

Scott Turner
Finance Director

LAW OFFICES

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

SUITE 1900, SHERATON PLAZA

27 NORTH 27TH STREET

P. O. BOX 2559

BILLINGS, MONTANA 59103-2559

TELEPHONE (406) 248-7731

TELECOPIER (406) 248-7889

FREDRIC D. MOULTON [1912-1989]
WM. H. BELLINGHAM
WARD SWANSER
BRENT R. CROMLEY
GERALD B. MURPHY
RANDY H. BELLINGHAM
ROBERT H. PRIGGE
SIDNEY R. THOMAS
K. KENT KOOLEN
GREGORY G. MURPHY
W. A. FORSYTHE
DOUG JAMES

BRAD H. ANDERSON
THOMAS E. SMITH
JOHN T. JONES
T. THOMAS SINGER
RAMONA HEUPEL STEVENS
MARTHA SHEEHY
SCOT SCHERMERHORN
HARLAN B. KROGH

BERNARD E. LONGO
W. S. MATHER
OF COUNSEL

March 16, 1993

EXHIBIT #3
DATE 4-2-93
SB- 426

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

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.

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
Suite 1900, Sheraton Plaza
P. O. Box 2559
Billings, Montana 59103

LAW OFFICES

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

SUITE 1900, SHERATON PLAZA

27 NORTH 27TH STREET

P. O. BOX 2559

BILLINGS, MONTANA 59103-2559

TELEPHONE (406) 248-7731

TELECOPIER (406) 248-7889

FREDRIC D. MOULTON (1912-1989)
WM. H. BELLINGHAM
WARD SWANSER
BRENT R. CROMLEY
GERALD B. MURPHY
RANDY H. BELLINGHAM
ROBERT H. PRIGGE
SIDNEY R. THOMAS
K. KENT KOOLEN
GREGORY G. MURPHY
W. A. FORSYTHE
DOUG JAMES

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T. THOMAS SINGER
RAMONA HEUPEL STEVENS
MARTHA SHEEHY
SCOT SCHERMERHORN
HARLAN B. KROGH

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

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.

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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NEW ISSUES

OFFICIAL STATEMENT
DATED AUGUST 1, 1984

NOT RATED

Interest is exempt, in the opinion of Dorsey and Whitney, from taxation by the United States of America for Federal income tax purposes and by the State of Montana for State of Montana individual income tax purposes.

$2,440,000
RURAL SPECIAL IMPROVEMENT DISTRICT NO. 8 BONDS
CARBON COUNTY, MONTANA

$1,025,000
RURAL SPECIAL IMPROVEMENT DISTRICT NO. 9 BONDS
CARBON COUNTY, MONTANA

Dated: August 1, 1984

Due: January 1, 2000

Negotiable Special Obligation Bonds for Rural Special Improvement District No. 8 and Rural Special Improvement District No. 9 are issuable in fully registered form in the denomination of $5,000 or multiples thereof. Basic interest is payable on January 1, 1985, and annually thereafter until maturity or prior redemption, by check or draft, to the owners of record as of the close of business on the fifteenth day of the immediately preceding month by the Registrar/Paying Agent, Norwest Management & Trust Company, Billings, Montana.

The Bonds mature on January 1, 2000. The Bonds are subject to mandatory redemption and prepayment by the County in whole or in part in order of the principal installment each represents at a price equal to the principal amount thereof plus interest accrued to the date of redemption at any time there are funds available in the District Funds after payment of interest due on all outstanding Bonds of the issue upon Notice of Redemption described herein. The Estimated Redemption Schedule below has been prepared by the Underwriters. Based on their estimate as to the expected redemption of Bonds by the County, all Bonds are priced to the estimated redemption date, but the Estimated Redemption Schedule is in no way guaranteed.

ESTIMATED REDEMPTION SCHEDULE

RSID #8			RSID #9		
Year	Amount	Basic Interest	Year	Amount	Basic Interest
1986	$140,000	7.500%	1986	$ 55,000	7.500%
1987	140,000	8.250%	1987	60,000	8.250%
1988	150,000	9.000%	1988	60,000	9.000%
1989	160,000	9.750%	1989	70,000	9.750%
1990	160,000	10.250%	1990	70,000	10.250%
1991	170,000	11.000%	1991	70,000	11.000%
1992	170,000	11.500%	1992	80,000	11.500%
1993	180,000	11.750%	1993	80,000	11.750%
1994	180,000	12.000%	1994	80,000	12.000%
1995	180,000	12.250%	1995	75,000	12.250%
1996	180,000	12.500%	1996	70,000	12.500%
1997	170,000	12.500%	1997	70,000	12.500%
1998	170,000	12.625%	1998	65,000	12.625%
1999	150,000	12.625%	1999	60,000	12.625%
2000	140,000	12.625%	2000	60,000	12.625%

DAIN BOSWORTH INCORPORATED

D.A. Davidson & Co., Incorporated

Piper, Jaffray & Hopwood Incorporated

In addition to the basic rates shown above, all Bonds will bear additional interest represented by separately registered additional interest certificates. These certificates are not part of this offering.

The Bonds are redeemable without premium in order of principal installment each represents at any time there are funds to the credit of the funds of Rural Special Improvement District No. 8 and Rural Special Improvement District No. 9, after payment of interest on the Bonds, for their redemption.

The Bonds are special and limited obligations of Carbon County, Montana, payable solely from the collection of special assessments paid into the Funds of Rural Special Improvement District No. 8 and Rural Special Improvement District No. 9 and, under certain circumstances, from the County's RSID Revolving Funds.

Each purchaser of the Bonds should read this Official Statement in its entirety and should give particular attention to the Section entitled "INTRODUCTION — Special Factors."

The Bonds are offered when, as and if issued, subject to approval of legality by Bond Counsel, and certain conditions.

Delivery of the Bonds in Minneapolis, Minnesota, is expected on or about August 31, 1984.

No dealer, salesman, or other person has been authorized to give any information or to make any representation with respect to the Bonds which is not contained in this Official Statement and, if given or made, such information or representation must not be relied upon at or after the date hereof as having been authorized by Carbon County or by the Underwriters. Neither the delivery of this Offical Statement nor any sale made after any such delivery shall under any circumstances create any implication that there has been no change in the affairs of the County since the date of this Official Statement. The information set forth herein, while obtained from sources which are believed to be reliable, is not guaranteed as to accuracy or completeness by the Underwriters. So far as statements made herein involve matters of opinion or estimates, whether or not expressly stated as such, they are not to be considered as representations of fact.

The prices at which the Bonds are offered to the public may vary from the initial public offering prices appearing on the Cover Page hereof. In addition, the Underwriters may allow concessions or discounts from such initial public offering prices to dealers and others, and the Underwriters may engage in transactions intended to stabilize the prices of the Bonds at a level above that which might otherwise prevail in the open market in order to facilitate their distribution. Such stabilizing, if commenced, may be discontinued at any time.

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INTRODUCTION

General

This Official Statement provides information in connection with the offering of $2,440,000 aggregate principal amount of Rural Special Improvement District No. 8 Bonds and with $1,025,000 in aggregate principal amount of Rural Special Improvement District No. 9 Bonds initially dated August 1, 1984 of Carbon County, Montana (the "County"). The proceeds of Rural Special Improvement District No. 8 Bonds will be used for the acquisition and construction of improvements to water mains and laterals, sewer mains and laterals, ditch crossings, culverts, and curb and gutter, gravel, paving, street signs and storm drainage system. A water supply main, a gravity sanitary sewer outfall line, a sanitary sewer force main, a duplex lift station, standby generator and related appurtenances will be constructed with the proceeds of Rural Special Improvement District No. 9 Bonds. These improvements will connect the sewer and water collection and distribution systems to the existing facilities located in Red Lodge, Montana.

Special Factors

1. Limited Obligations of the County: The Bonds are not general obligations of the County, but rather represent special and limited obligations payable solely from collection of special assessments, including interest thereon, to be levied on property located within the District with respect to which such Bonds are issued and, in certain circumstances, from the County's RSID Revolving Fund.

2. Redemption: The estimated schedule of redemption set forth on the Cover Page hereof represents an estimate only, and no assurance can be given that the Bonds will in fact be redeemed as indicated in such schedule. Prepayments of assessments within the District could result in redemptions at a more rapid rate than indicated and, conversely, slower than anticipated assessment payment could result in Bonds being outstanding for a longer period than estimated.

3. Secondary Market: While the Underwriters intend, insofar as possible, to maintain a secondary market in the Bonds after their issuance, there can be no assurance that such a secondary market can or will be maintained by the Underwriters or others, and purchasers of the Bonds should accordingly be prepared to hold their Bonds to maturity or prior redemption.

4. Revolving Fund: In the event of a deficiency in the Bond and interest accounts of the District Fund, the Board of County Commissioners will issue orders annually authorizing loans or advances from the Revolving Fund sufficient to make any deficiency to the extent that funds are available, and

further to provide funds for the Revolving Fund through a tax levy or transfer for the General Fund, subject to the limitation that no such tax levy or transfer may cause the balance in the Revolving Fund to exceed five percent of the principal amount of the County's outstanding Rural Special Improvement District Bonds secured thereby.

Agreement to Provide Further Security

Red Lodge Country Club Estates Joint Venture, a joint venture organized and existing under the provisions of Montana Code Annotated, Title 35, Chapter 10, as amended (hereinafter referred to as the Joint Venture), Dain Bosworth Incorporated, of Denver, Colorado, D. A. Davidson & Company, of Great Falls, Montana, and Piper, Jaffray & Hopwood Incorporated, of Minneapolis, Minnesota (collectively, Dain, Davidson and Piper are referred to hereinafter as the Underwriters); and United States National Bank of Red Lodge, a national banking association with its principal office located in Red Lodge, Montana (the Escrow Agent); entered into an agreement to provide additional security for the Bonds as described below.

1. On or before the date of the Additional Security Agreement, the Joint Venture will cause to be delivered the Escrow Agent two irrevocable standby letters of credit issued by Norwest Bank Billings, National Association, of Billings, Montana (the Issuer), for the account of the Joint Venture, in form and substance satisfactory to Dain, as representative of the Underwriters. One such letter of credit shall be in the stated amount of $675,000 and shall expire by its terms no earlier than January 1, 1986 (the 1985 Letter of Credit); the other letter of credit shall be in the stated amount of $550,000 and shall expire by its terms no earlier than January 1, 1987 (the 1986 Letter of Credit). The 1985 Letter of Credit shall secure payment of the special assessments and interest thereon payable November 30, 1985 in District No. 8 and District No. 9 (the 1986 Letter of Credit shall secure payment of the special assessments and interest thereon payable November 30, 1986 in District No. 8 and District No. 9).

2. Pursuant to the Escrow Agreement, two escrow accounts have been established for the deposit of moneys to be applied to the payment of certain special assessments in District No. 8 and District No. 9. The Joint Venture hereby covenants to pay to the Escrow Agent for deposit in Escrow Account Nos. 8 and 9 (a) on or before March 15, in each of the years 1987, 1988 and 1989 the amount of special assessments and interest thereon payable on the next succeeding November 30 levied on Developer Lots (as hereinafter defined) in Districts No. 8 and 9; and (b) on or before March 15 and September 15 in each of the years 1990, 1991 and 1992, one-half of the amount of special assessments and interest thereon payable on the next succeeding November 30 levied on Developer Lots in Districts

No. 8 and 9. For purposes of this paragraph, "Developer Lots" shall mean those lots, parcels or tracts of land comprising part of the Subdivision or the Property and as to which the Joint Venture or any joint venturer thereof either is the owner in fee simple thereof or is the vendor under a contract for deed or similar instrument relating thereto as of December 10th of each year. For purposes of this definition, each lot, parcel or tract of land within the Subdivision and the Property shall be deemed to be a Developer Lot, unless and until the Joint Venture furnishes to the Escrow Agent and the Underwriter evidence reasonably satisfactory to the Underwriter that neither the Joint Venture nor any joint venturer thereof has an interest as owner or vendor under a contract for deed or similar instrument in said lot, parcel or tract.

3. In the event special assessments and interest thereon levied on Developer Lots in District No. 8 and District No. 9 become delinquent, and have not been and cannot be paid in full from proceeds of a draw under the 1985 Letter of Credit or the 1986 Letter of Credit, from moneys on deposit in Escrow Account No. 8 or Escrow Account No. 9, respectively, or from the Rural Special Improvement District Revolving Fund of the County, the Joint Venture hereby covenants and agrees to pay, from time to time and subject to the limitations hereinafter provided, to the Escrow Agent, forthwith upon demand by notice in writing from any of the Underwriters, an amount sufficient to satisfy any such delinquencies and any penalties and interest relating thereto; provided that in no event shall the amount paid to the Escrow Agent pursuant to any such demand from time to time exceed for District Nos. 8 and 9: 25% of the aggregate principal and interest on each issue included the debt previously secured by the letters of credit.

4. The Joint Venture covenants to maintain its existence as a general partnership organized and existing under the laws of the State of Montana, and will not wind up or sell or otherwise dispose of, except in the course of its ordinary real estate development activities, all or substantially all of the partnership assets; provided that the Joint Venture may dissolve and wind up or sell or otherwise dispose of all or substantially all of the partnership assets to a corporation or a partnership organized and existing under the laws of one of the states of the United States or an individual, if the transferee corporation, partnership or individual, as the case may be, has a net worth, determined and verified in a manner reasonably satisfactory to the Underwriters, as of the close of the immediately preceding fiscal or calendar year for which its financial statements are available, of not less than $16,000,000, assumes in writing all the obligations of the Joint Venture under this Agreement, and the prior written consent of the Underwriters is obtained, which consent shall not be unreasonably withheld. Every transferee corporation, partnership and other person referred to in this Section 4 shall be bound by all of the covenants and agreements of the Joint

Venture herein with respect to any further sale or transfer and shall execute an appropriate instrument assuming such covenants and agreements in form and substance satisfactory to the Underwriters. In the event a corporation, partnership or individual succeeds the Joint Venture pursuant to the provisions of this Section 4, the Joint Venture and each joint venturer thereof shall be released from all liability hereunder.

5. The Agreement shall be binding upon the Joint Venture, its joint venturers, and their heirs, representatives, and permitted successors and assigns, shall inure to the benefit of and be enforceable by the Escrow Agent or any of the Underwriters or their successors, or any holder of a District No. 8 Bond or a District No. 9 Bond, such holders being third-party beneficiaries of this Agreement.

Copies of the Additional Security Agreement are available from the Underwriters upon request.

THE BONDS

Description of the Bonds

The two Bond issues, to be designated "Rural Special Improvement District No. 8 Bonds and Rural Special Improvement District No. 9 Bonds" will be in the denomination of, will bear interest at the rate of, and will be subject to the other terms and conditions summarized on the Cover Page hereof.

Each of the Bonds shall represent one or more principal installments of each issue within a basic single interest rate. Principal installments of Rural Special Improvement District No. 8 are numbered 1 through 448; principal installments of Rural Special Improvement District No. 9 are numbered 1 through 205.

Basic interest on the Bonds is payable by check or draft mailed by the Norwest Management & Trust Co., Billings, Montana as Bond Registrar and Transfer Agent, or such successor as may be designated by the County Commissioners. The Bonds bear additional interest represented by separately registered additional interest certificates which have been retained by the Underwriter and are not offered pursuant to this Official Statement.

The Bonds are issuable in registered form only, and the owners of each Bond will be registered with the Bond Registrar. The Bond Registrar will keep at its principal office a bond register in which the Bond Registrar will provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds. The Bond Registrar may treat the person in whose name any Bond is at any time

registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purposes of receiving payment and for all other purposes.

Each Bond issued will be dated as of the date of its authentication and have an original issuance date of August 1, 1984.

Redemption

The Bonds are redeemable in whole or in part without premium in order of principal installments at any time when the interest accrued upon the Bonds has been paid and funds are available for their redemption. The date of redemption is to be fixed by the Treasurer of Carbon County, Montana , who is required to give notice of redemption by publication once in a local newspaper or, at the option of the Registrar, by written notice to the registered owners of the Bonds to be redeemed at the addresses appearing in the bond register for the issue, of the number of the Bonds and principal installments to be redeemed and the date upon which payment will be made, which date may not be less than ten days after the date of publication or of service of notice, on which date so fixed interest on said Bonds or principal installments thereof ceases.

Prospective purchasers of the Bonds should note that the rate at which Bonds are redeemed in advance of their maturity date is a function of the rate at which assessment payments are made by owners of property within the District and that the rate of payment of such assessments is, in turn, dependent upon a number of factors including the financial condition of such property owners and the requirements of individual mortgage lenders and/or insurers as to the prepayment of assessments prior to disbursement of loan funds. The schedule of estimated redemption of Bonds shown on the Cover Page hereof is an estimate only.

Authority for Issuance

The Bonds are to be issued pursuant to authority of the Montana Code Annotated, Title 7, Chapter 12, Part 21, as amended (the "Act"). The Act authorizes the formation, after submission of a petition, a period for filing written protest and a public hearing, of Rural Special Improvement Districts in Montana counties, to assist the acquisition and construction of certain local improvements, and the issuance of Rural Special Improvement District Bonds to finance the costs of such acquisition and construction.

The Bond Resolution

Each issue will be authorized and delivered pursuant to a resolution (the "Bond Resolution") to be adopted by the Board

of County Commisisoners (the "Board") prior to the delivery of the Bonds. The Bond Resolution provides for the form of bond to be issued as well as the interest rates to be borne by specific principal installments. In the Bond Resolutions the Board finds the total cost of acquiring and constructing the improvements within District No. 8, including all incidental and administrative costs, to be $2,440,000 and the cost of constructing the improvements to District No. 9 to be $1,025,000. Based upon this finding, the Bond Resolutions fix the total principal amounts of the issues to be as specified above.

In each Bond Resolution, the Board creates a special County fund designated as the District Fund for Rural Special Improvement District No. 8 and the District Fund for Rural Special Improvement District No. 9 (the "Fund") into which there are to be deposited the proceeds of the special assessments to be levied on the benefited property within the Districts, and out of which are to be paid the principal of and interest on the Bonds.

In each Bond Resolution, the County covenants with the holders of the Bonds that for so long as the Bonds, or any interest thereon, remain unpaid:

a. it will hold the Fund and the County RSID Revolving Fund created by Resolution (the "Revolving Fund") separate from the County's other funds;

b. it will do all acts and things necessary to ensure completion of and acquisition or construction of the improvements financed with the proceeds of the Bonds and will pay the costs thereof out of the Fund and within the amount of Bond proceeds appropriated thereto;

c. it will do all acts necessary for the final and valid levy of special assessments on the assessable property within the District in accordance with the Laws and Constitution of the State of Montana and the Constitution of the United States, in an amount not less than the principal amount of each issue;

d. if any special assessment levied pursuant to the Bond Resolution is held invalid, the County will take all steps necessary to correct and, if necessary, re-assess and re-levy the same.

The County further covenants that the special assessments will be payable in annual equal installments of principal, payable on November 30 in the years 1985 through 1999, and that it will charge interest on the whole amount of each assessment remaining unpaid at a rate equal to the rate or rates of

interest on the Bonds then outstanding, payable at the same time and in the same manner as installments of principal. The first installment of each assessment is to include interest on the entire assessment from January 1, 1985 to January 1, 1986. All installments of special assessments not paid in full on or before the date due become delinquent on that date. The assessments constitute a lien upon and against the property against which they are levied, which lien may be extinguished only by payment of the assessment with all penalties, costs and interest as provided by law. A tax deed issued with respect to any lot or parcel of land does not operate as payment of any installment of assessment thereon which is payable after the execution of such deed. The issuance of a tax deed, however, does extinguish the lien of installments or assessments payable before execution of the deed.

Bondholders' Remedies

In the event of a default in the payment of principal of or interest on the Bonds, the bondholders' remedies would consist chiefly of seeking a writ of mandamus ordering the County to perform the specific covenants made by it in the Bond Resolution. Bondholders do not have the right to foreclose against specific property in the District or to compel the levying of general ad valorem taxes for the payment of principal of and interest on the Bonds. If sufficient assessments for the payment of interest on and principal of the Bonds are not received, the County has covenanted to advance funds from the Revolving fund, and to provide, in turn, funds for the Revolving Fund through a tax levy or loan from the County's General Fund, subject to the limitation that no such tax levy or transfer may cause the balance in the Revolving Fund to exceed five percent of the principal amount of the County's outstanding Rural Special Improvement District Bonds secured thereby. Should such reliance upon taxes be necessary, no assurance can be given that the procedural steps required under the tax laws of the State of Montana could be accomplished without delay and in time to result in tax revenues being available in sufficient amounts for the timely payment of the Bonds.

The rights of the bondholders may also be subject to limitation pursuant to the Federal bankruptcy laws and to the exercise, under certain extreme circumstances, of the sovereign police power of the State of Montana and its political subdivision.

Estimated Debt Service and Redemption Requirements of the Bonds

The following table sets forth the amounts required to pay interest and redeem Bonds on the estimated redemption schedule set forth on the cover hereof:

RSID # 8

Year	Estimated Principal	Basic Interest	Additional Interest	Total
1985	$ ---	$113,510.42	$89,466.67	$202,977.09
1986	140,000	272,425.00	92,150.00	504,575.00
1987	140,000	261,925.00		401,925.00
1988	150,000	250,375.00		400,375.00
1989	160,000	236,875.00		396,875.00
1990	160,000	221,275.00		381,275.00
1991	170,000	204,875.00		374,875.00
1992	170,000	186,175.00		356,175.00
1993	180,000	166,625.00		346,625.00
1994	180,000	145,475.00		325,475.00
1995	180,000	123,875.00		303,875.00
1996	180,000	101,825.00		281,825.00
1997	170,000	79,325.00		249,325.00
1998	170,000	58,075.00		228,075.00
1999	150,000	36,612.50		186,612.50
2000	140,000	17,675.00		157,675.00

RSID #9

Year	Estimated Principal	Basic Interest	Additional Interest	Total
1985	$ ---	$ 47,674.48	$40,145.83	$ 87,820.31
1986	55,000	114,418.75	39,187.50	208,606.25
1987	60,000	110,293.75		170,293.75
1988	60,000	105,343.75		165,343.75
1989	70,000	99,943.75		169,943.75
1990	70,000	93,118.75		163,118.75
1991	70,000	85,943.75		155,943.75
1992	80,000	78,243.75		158,243.75
1993	80,000	69,043.75		149,043.75
1994	80,000	59,643.75		139,643.75
1995	75,000	50,043.75		125,043.75
1996	70,000	40,856.25		110,856.25
1997	70,000	32,106.25		102,106.25
1998	65,000	23,356.25		88,356.25
1999	60,000	15,150.00		75,150.00
2000	60,000	7,575.00		67,575.00

In the Application of the proceeds of the Bonds, $140,000 has been designated to pay interest on Rural Special Improvement District No. 8 Bonds due January 1, 1985, and it is expected that investment earnings on the unexpended proceeds of the District No. 8 Bonds will equal $62,977.09 so as to provide funds sufficient to make the interest payment due January 1, 1985. $60,000 has been designated to pay the January 1, 1985 interest payment on Rural Special Improvement District No. 9. Investment earnings on the unexpended proceeds are expected to equal $27,820.31.

Revolving Fund

The County Commissioners have created the Revolving Fund for the purpose of securing payment of certain of the County's Rural Special Improvement District Bonds. The Bonds and all outstanding Rural Special Improvement District Bonds are secured by the Revolving Fund, but the County may in the future issue Rural Special Improvement District Bonds secured or not secured by the Revolving Fund. The County Commissioners may provide monies for the Revolving fund by loaning monies from the General Fund to the Revolving Fund at its discretion as it deems necessary, or by levying an ad valorem tax on all taxable property in the County as necessary to meet the financial requirements of the Revolving Fund.

In the Bond Resolution, the County Commissioners will agree to issue orders annually authorizing loans from the Revolving Fund to the District Fund to the extent monies are available, and to provide monies for the Revolving Fund to such amounts as the County Commissioners deem necessary by making a tax levy or loan from the General fund, subject to the limitation that no such tax levy or loan may cause the balance in the Revolving Fund to exceed five percent of the principal amount of the County's outstanding RSID bonds secured thereby. In addition, the County will levy 2 mills (approximately $56,000) on all taxable property within the County for the fiscal year 1984/85.

When monies are loaned from the Revolving Fund to an RSID fund, the Revolving Fund has a lien therefore on all money thereafter deposited in the District Fund to the extent of the loan plus interest accrued thereon at the rate of interest borne by the Bond with respect to which the loan was made. The loan is to be repaid upon order by the County Commissioners whenever there is money in the District Fund not necessary for the payment of principal of or interest on Bonds payable from the District Fund. Any monies remaining in an RSID Fund after payment of the principal of and interest on all Bonds payable there from and repayment of any loans are to be transferred to the Revolving Fund.

Montana law regards as surplus monies funds on deposit in the Revolving Fund in excess of five percent of the principal amount of the RSID Bonds of the County then outstanding and secured thereby, and the amount then necessary for the payment or redemption of outstanding Bonds secured thereby or the interest thereon. The Board may transfer such surplus monies to the General Fund of the County. Monies on deposit in the Revolving Fund may also be loaned to RSID Maintenance Funds to pay the cost of emergency repairs if such loans will not interfere with the payment of RSID bonds secured thereby.

Although, as described in the preceding paragraphs, funds raised by taxation may, subject to limitation, be applied to the payment of principal of or interest on the Bonds in the event of delinquencies in the payment of special assessments levied against property in the District, no assurance can be given that such monies will be available in amounts or at times sufficient to provide for the prompt payment of such principal and interest. The Bonds and interest thereon are payable primarily from special assessments levied against benefited property in the District, and those considering an investment in the Bonds should look to the property owners and the property in the District with respect to which the Bonds are issued as providing the principal security for payment of financial capabilities of such property owners and the value and marketability of such property.

Description

There are twelve partners in the Red Lodge Country Club Estates; ownership varying from 5% to 15%. The development will be done in two steps. The first phase will consist of 166 single-family lots, 28 multi-family lots, and 32 duplex lots. A total of 128 lots are under contract as of July 1, 1984.

The Joint Venture has a history of undertaking the development of residential developments. The need for this project has been demonstrated by individuals who have an interest in developing single-family lots. However, there is no guaranty at what rate these lots will be fully developed.

RSID #8

The proceeds of this issue will be used to design and construct sewer and water laterial improvements in Phase I of the Red Lodge Country Club Estates along with storm drainage, curbs, gutters, and streets. The engineer has tabulated the cost of this project as follows.

Application of Funds

Construction	$1,631,263	
Contingency	184,000	
Engineering	200,150	
Testing	61,675	
Legal	40,000	
Permit & Miscellaneous & Acquisition	129,000	
Capitalized interest	202,977	
Revolving funds and County cost	110,135	
Bond issuance costs	15,000	
Total Expenses		$2,574,200

Source of Funds

Bond Proceeds	$2,440,000	
Investment Earnings	134,200	
Total Revenues		$2,574,200

There is a total of 6,154,378 square feet and each square foot will be assessed $.399.

Security

The $2,440,000 will be assessed against benefited properties over 15 years with equal annual principal payments and interest on the balance outstanding. The assessment will be levied in 1985, with the first payment due November 1, 1985.

Description

RSID #9

The proceeds of the RSID No. 9 issue will be used to construct a water main from the City of Red Lodge to serve the development, and a sewer main serving the development and connecting the City's sewer treatment to the facility. According to the consulting engineer, the costs are estimated as follows:

Application of Funds

Construction	$543,274	
Contingency	76,058	
Engineering	114,800	
Legal	33,270	
Testing	32,865	
Montana Power Feeder Main	100,000	
Revolving fund and County costs	64,496	
Bond issuance	10,000	
Capitalized interest	87,820	
Total Expenses		$1,062,583

Source of Funds

Bond Proceeds	$1,025,000	
Investment earnings	37,583	
Total Revenues		$1,062,583

There is a total of 13,875,004 square feet in this district, which will be assessed at $.0739 per assessable square foot.

Security

The $1,025,000 will be assessed against the benefited properties. The assessment will be levied prior to August 1, 1985 with the first principal and interest payment due January 1, 1986. The assessment will be levied over a 15-year period with equal annual principal and interest on the declining balance. The cost to various sized lots are approximately as follows:

Lots assessed for RSID #8 - $.3990/sq.ft.
RSID #9 - $.0739/sq.ft.
Total Cost $.4729/sq.ft.

Lot Size	Total Assessment	Annual Principal	1st Year Payment	Last Year	Average Annual
7,500	$3,546.75	$236.45	$ 644.33	$263.64	$453.98
10,000	4,729.00	315.27	859.10	351.52	605.31
15,000	7,093.50	572.90	1,288.66	527.28	907.96

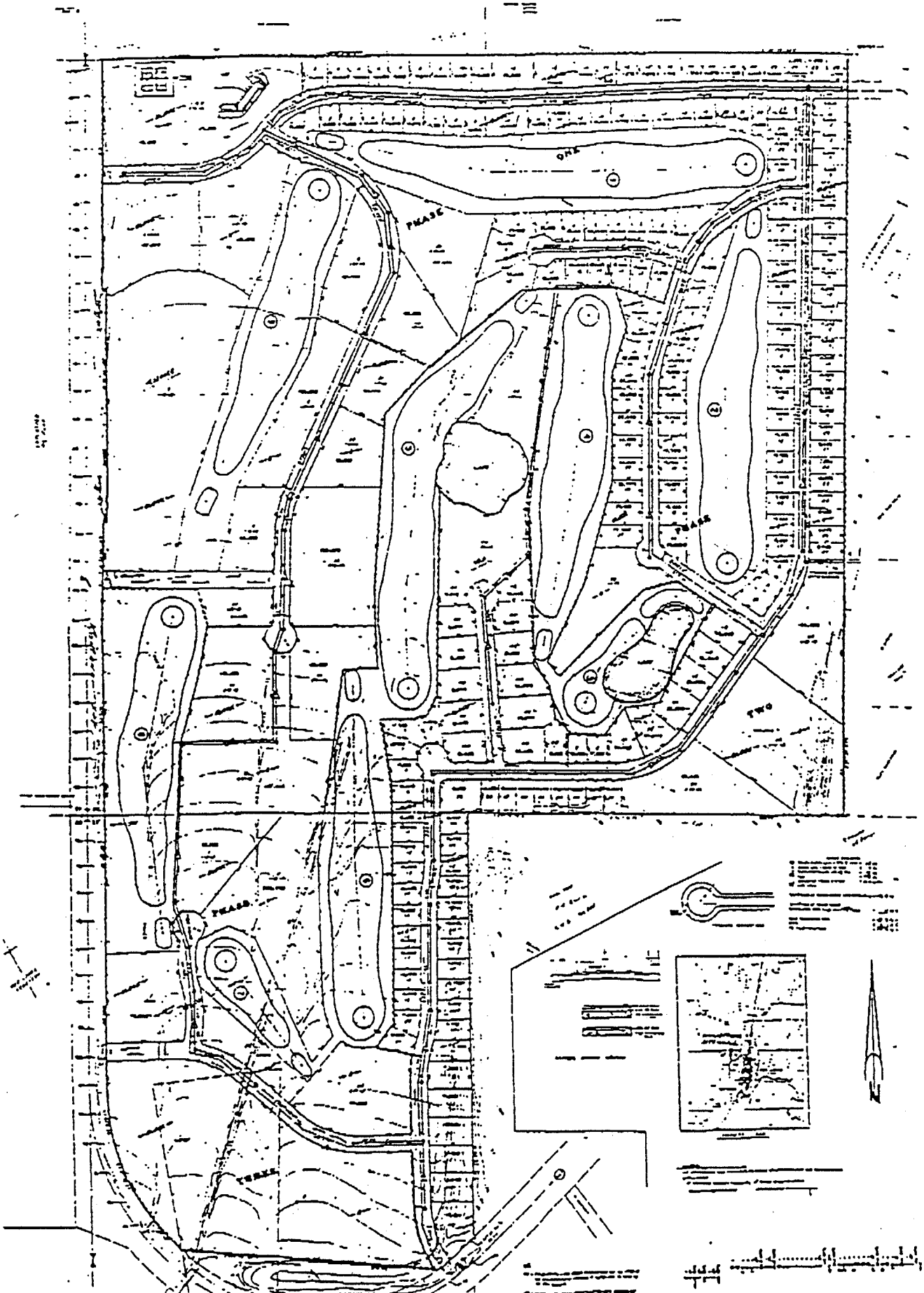
*Lot assessed for only RSID #9 .0739/sq.ft.

7,500	$ 554.25	$ 36.95	$ 100.69	$ 41.20	$ 70.94
10,000	739.00	49.27	132.26	54.93	94.59
15,000	1,108.50	73.90	201.38	82.40	141.89

*Initially, the Joint Venture will be responsible for paying the special assessment on those lots being assessed only for RSID #9 plus those properties designated as Developer Lots in Rural Special Improvement District No. 8 plus the remaining portion of Rural Special Improvement District No. 9 which is due west of Rural Special Improvement District No. 8 and encompasses the second nine holes of the golf course.

Columbia Falls Estates

BEING CERTIFICATE OF SURVEY No. 1263



GENERAL INFORMATION

Carbon County is located in southcentral Montana. Red Lodge, the County seat, is 60 miles southwest of Billings, and 150 miles east of Bozeman.

County Commissioners:

Bob Rowland, Chairman
Frank Cole
Richard Steffan

Property Valuations:

	Assessed Valuation	Taxable Valution
1979	$138,047,693	$19,807,543
1980	149,086,996	20,920,348
1981	161,276,794	23,617,810
1982	163,714,771	27,321,207
1983	160,463,516*	25,791,792

*Valuations will fluctuate based on oil production in a given year.

Tax Levies and Collections:

Year Levied	Taxes Levied	Year Collected	Taxes Collected
1979	$ 862,218	1980	N/A*
1980	1,032,257	1981	
1981	957,302	1982	
1982	1,130,723	1983	
1983	1,199,041	1984	

*According to the County Treasurer, collections always exceed 97%.

General Financial Information:

As of June 30, 1984:	
G.O. Bond Debt Outstanding:	$ -0-
Rural Special Improvement District Bonds Outstanding:	$64,229.18
Balance in RSID Revolving Fund:	$ -0-

Larger Taxpayers:

NAME	1983 TAXABLE VALUATION
Amoco Oil Company	$9,500,906
Montana Power Co.	1,714,150
Burlington Northern	377,830
Phillips Petroleum	261,666
Conoco	136,785
Red Lodge Mountain	122,824
Carriage Corporation	64,787

Larger Employers:

	NUMBER OF EMPLOYEES
Carbon County Schools	185
Carbon County	50
Red Lodge Mountain Ski Area	45
Montana Power	30
Carriage Corporation	30
Carbon County Memorial Hospital	45

	Carbon County		State of Montana	
	Total Civilian Labor Force	Percent Unemployement	Total Civilian Labor Force	Percent Unemployment
1979	3,246	4.3%	371,000	5.1%
1980	3,273	4.5%	370,000	6.1%
1981	3,558	4.6%	384,000	6.9%
1982	3,719	7.3%	393,000	8.6%
1983	3,947	7.4%	394,000	8.8%

Source: Helena Department of Commerce

School Enrollment:

	Elementary (K-8)	High School (9-12)
1979-80	1,116	556
1980-81	1,056	501
1981-82	1,096	484
1982-83	1,151	476
1983-84	Available 10/1/84	Available 10/1/84

Source: Montana Department of Commerce

Deposits of the County's banks are offered below:

	Deposits As of 12/31/82	Deposits As of 12/31/83
U.S. National Bank	$ 557,686	$ 1,086,335
Montana Bank of Red Lodge N.A.	16,769,642	18,734,799
Bank of Bridger	9,111,088	9,711,775

Legality

An opinion as to the validity of the Bonds and the exemption from taxation of the interest thereon will be delivered by the law firm of Dorsey & Whitney, Minneapolis, Minnesota.

Dorsey & Whitney were not requested to and did not participate in the preparation of this Official Statement nor has such firm undertaken to independently verify the accuracy, sufficiency or completeness of the information contained herein.

LAW OFFICES

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

SUITE 1900, SHERATON PLAZA

27 NORTH 27TH STREET

P. O. BOX 2559

BILLINGS, MONTANA 59103-2559

TELEPHONE (406) 248-7731

TELECOPIER (406) 248-7889

FREDRIC D. MOULTON [1912-1989]
WM. H. BELLINGHAM
WARD SWANSER
BRENT R. CROMLEY
GERALD B. MURPHY
RANDY H. BELLINGHAM
ROBERT H. PRIGGE
SIDNEY R. THOMAS
K. KENT KOOLEN
GREGORY G. MURPHY
W. A. FORSYTHE
DOUG JAMES

BRAD H. ANDERSON
THOMAS E. SMITH
JOHN T. JONES
T. THOMAS SINGER
RAMONA HEUPEL STEVENS
MARTHA SHEEHY
SCOT SCHERMERHORN
HARLAN B. KROGH

BERNARD E. LONGO
W. S. MATHER
OF COUNSEL

March 31, 1993

EXHIBIT #3
DATE 4-2-93
SB- 426

John M. Shontz
Doney, Crowley & Shontz
P. O. Box 1185
Helena, MT 59624

Re: Senate Bill 426

Dear John:

John, I was wondering whether or not there might be some legal problems with Senate Bill 426 by attempting to make it retroactive. The problem I have with the retroactivity is that the revolving fund statute makes reference to it being for prompt payment and for a loan and now it is being altered and changed to a guarantee and a pledge. Additionally, all reference under RSID statutes and even in the bonds that are out there make reference to the fact that payment will come from assessments against the land. Senate Bill 426 is asking to change all that and could materially increase the liability of the cities and counties involved and attempt to do so retroactively. I think this may raise some constitutional question as well as some ex post facto questions.

Additionally Senate Bill 426 is a carte blanche exemption of the limitations imposed upon counties to incur bond indebtedness exceeding $500,000. So, in essence, this puts the two statutes against each other--one saying the county cannot be obligated to incur an indebtedness exceeding $500,000, and another one saying that you can for revolving fund purposes. Since the general statute limiting the $500,000 was enacted to comply with a constitutional mandate, I am wondering which one should take precedence and whether or not this is valid.

EXHIBIT #3
DATE 4-2-93
SB-426

security comprised two irrevocable standby letters of credit issued by Norwest Bank Billings, National Association, which secured the payment of special assessments in the Districts payable on November 30, 1985 and November 30, 1986, the Agreement and the Escrow Agreement. The amounts and purposes of the letters of credit are described in Section 1 of the Agreement.

Section 2 of the Agreement provides that the Joint Venture will prepay special assessments due on Developer Lots (as defined in the Agreement) in full on March 15 in 1987, 1988 and 1989 and in two equal installments on March 15 and September 15 in 1990, 1991 and 1992. The Joint Venture agrees to make these prepayments to the Escrow Agent for deposit in Escrow Accounts established under the Escrow Agreement. The Escrow Agent is charged under Section 2 of the Agreement and under Section 4 of the Escrow Agreement to notify each of the Underwriters if the deposits are not timely made. Section 2 of the Agreement concludes: "If the Joint Venture defaults in its obligations under this Section 2, no consequences shall attach to such default, and the Underwriters expressly waive, subject to Section 3 hereof, personal liability on the part of the Joint Venture or any of the joint venturers thereof to make such deposits or satisfy any deficiency therein." The purpose of this statement was our attempt to ensure that neither the Joint Venture nor the joint venturers incurred any personal obligation to pay the special assessments because of our concern that the Bonds not be deemed industrial development bonds. At the time the Bonds were issued, we advised the Underwriters that the purpose of Section 2 was to provide a procedure for giving early warning of any delinquency problems in the payment of special assessments levied in Rural Special Improvement District Nos. 8 and 9 (the "Districts"). Such early warning would give the Underwriters longer than a month to investigate the circumstances in advance of the principal and interest payments due on the Bonds on each January 1. We understand that this purpose has been essentially served even though, we have been advised, the Escrow Agent has failed to notify the Underwriters of the failure of the Joint Venture to make the deposits required by Section 2.

In Section 3 of the Agreement the Joint Venture agrees to pay, upon written demand of the Underwriters, amounts sufficient to pay delinquent special assessments and penalties and interest thereon levied against Developer Lots, if such payments cannot be made from draws under the letters of credit, money on deposit in the Escrow Accounts established to receive the payments made under Section 2 or from advances made by the County from its Rural Special Improvement District Revolving Fund. This agreement is substantially limited, however, again based on our concern that the Bonds not be deemed industrial development bonds. The limitations are that no payments for principal of special assessments for each District may exceed 25 percent of the aggregate principal amount of special assessments that has been paid or is then due and payable in the District less the portion of the letters of credit allocable to the payment of such principal (whether or not drawn on) and less any previous

AG, LAND PARCEL

Counts	# in 20 to 39.9 ACRES	# in 40 to 59.9	# in 60 to 79.9	# in 80 to 99.9	# in 100 to 119.9	# in 120 to 139.9	# in 140 to 159.9	Total TRACTS
Beaverhead	144	64	22	33	10	29	20	322
Big Horn	72	91	38	91	34	60	38	424
Blaine	41	42	42	63	29	40	63	320
Broadwater	99	36	33	26	23	13	35	265
Carbon	182	115	55	82	47	73	69	623
Carter	29	34	10	46	8	16	20	163
Cascade	505	199	122	115	65	60	103	1169
Chouteau	41	78	28	105	19	51	61	383
Custer	92	108	24	54	22	28	30	358
Daniels	21	29	12	70	6	24	27	189
Dawson	77	39	23	27	22	21	44	253
Deer Lodge	60	16	11	5	1	6	8	107
Fallon	32	21	11	28	10	10	39	151
Fergus	141	120	40	109	38	56	47	551
Flathead	434	128	95	58	30	25	23	793
Gallatin	797	213	107	93	87	49	113	1459
Garfield	22	28	8	30	9	24	8	129
Glacier	71	123	45	140	24	33	69	505
Golden Valley	43	23	13	16	8	9	16	128
Granite	88	46	8	12	12	11	15	192
Hill	89	67	37	82	15	37	76	403
Jefferson	535	170	112	60	40	30	22	969
Judith Basin	33	50	24	33	11	27	33	211
Lake	385	202	152	178	43	59	63	1082
Lewis And Clar	569	181	88	43	31	29	46	987
Liberty	26	47	15	45	4	29	24	190
Lincoln	82	16	8	5	2	2	3	118
Madison	613	128	68	76	41	40	48	1014
Mccone	18	33	16	34	12	21	41	175
Meagher	91	30	15	10	9	6	9	170
Mineral	25	11	2	1	0	0	0	39
Missoula	360	100	43	16	9	15	12	555
Musselshell	405	162	35	56	16	22	37	733
Park	546	128	63	41	33	17	39	867
Petroleum	10	41	4	29	5	13	13	115
Phillips	43	40	25	58	11	31	47	255
Pondera	47	60	35	64	32	26	58	322
Powder River	25	43	8	25	12	24	14	151
Powell	176	137	25	33	14	16	18	419
Prairie	12	15	12	11	4	4	12	70
Ravalli	747	266	141	94	52	44	29	1373
Richland	100	85	60	77	41	48	63	474
Roosevelt	94	143	50	96	36	55	71	545
Rosebud	83	70	38	45	28	23	47	334
Sanders	172	56	14	35	7	12	19	315
Sheridan	37	33	16	58	10	37	51	242
Silver Bow	129	42	31	15	18	15	13	263
Stillwater	319	91	46	64	28	36	46	630
Sweet Grass	78	58	34	36	13	20	27	266
Teton	96	62	59	73	30	47	88	455
Toole	52	54	30	86	14	37	49	322
Treasure	4	11	7	20	6	5	22	75
Valley	92	88	34	120	19	37	53	443
Wheatland	124	38	11	20	6	7	21	227
Wibaux	13	1	3	6	2	4	21	50
Yellowstone	428	266	135	135	63	67	87	1181
	9,649	4,578	2,243	3,083	1,221	1,580	2,170	24,524

EXHIBIT 4
DATE 4/2/93

Land Valuation	Tot Value in 20 to 39.9	Tot Value in 40 to 59.9	Tot Value in 60 to 79.9	Tot Value in 80 to 99.9	Tot Value in 100 to 119.9	Tot Value in 120 to 139.9	Tot Value in 140 to 159.9	Total
Beaverhead	30,042	24,803	21,338	24,259	11,010	37,812	30,649	179,913
Big Horn	36,922	58,342	56,382	110,326	56,249	121,212	130,265	569,698
Blaine	10,078	12,267	39,227	39,385	44,690	54,345	128,314	328,306
Broadwater	16,891	15,019	37,692	35,090	25,540	30,411	92,137	252,780
Carbon	83,125	71,013	88,251	119,233	108,197	205,866	279,792	955,477
Carter	4,033	7,867	3,838	15,762	4,147	7,778	17,755	61,180
Cascade	740,177	316,888	646,071	439,443	472,075	231,762	603,574	3,449,990
Chouteau	19,430	58,817	34,954	184,653	51,195	140,562	238,423	728,034
Custer	28,427	32,590	21,874	59,867	46,985	42,086	68,651	300,480
Daniels	4,456	15,479	12,165	75,829	8,336	33,895	53,441	203,601
Dawson	14,652	19,740	12,719	17,733	29,687	35,047	82,146	211,724
Deer Lodge	10,089	5,649	4,044	835	642	4,074	8,088	33,421
Fallon	3,227	4,804	4,848	11,364	3,680	5,495	33,846	67,264
Fergus	42,033	54,888	42,064	125,392	58,455	82,807	109,514	515,153
Flathead	303,739	172,860	238,349	187,388	116,111	124,127	148,915	1,291,489
Gallatin	197,750	163,616	171,451	162,479	214,154	140,745	438,629	1,488,824
Garfield	2,582	4,453	2,935	11,441	5,030	16,439	5,101	47,981
Glacier	19,655	59,505	29,942	110,154	22,743	66,474	155,279	463,752
Golden Valley	9,312	6,304	8,733	8,551	4,359	7,636	16,592	61,487
Granite	32,722	37,507	12,197	15,792	14,978	29,905	26,508	169,609
Hill	17,385	26,138	33,907	100,825	21,644	52,816	189,144	441,859
Jefferson	59,262	38,820	39,479	24,444	58,190	19,086	10,738	250,019
Judith Basin	13,443	29,353	21,768	39,722	22,814	49,634	130,662	307,396
Lake	391,546	271,134	254,518	245,668	81,941	118,881	159,722	1,523,410
Lewis And Clar	180,302	72,338	62,336	33,559	42,777	53,239	68,079	512,630
Liberty	7,591	28,127	16,897	57,116	4,881	45,285	76,059	235,956
Lincoln	19,739	3,749	9,607	4,912	1,286	1,920	4,635	45,848
Madison	92,467	47,255	42,058	89,734	56,846	50,664	112,406	491,430
Malcone	2,466	8,879	11,109	25,309	16,864	21,509	81,293	167,429
Meagher	9,485	5,454	8,889	4,456	5,031	4,112	14,126	51,553
Mineral	6,135	4,491	1,739	749	0	0	0	13,114
Missoula	102,831	69,016	39,523	17,248	9,229	29,021	19,253	286,121
Musselshell	50,159	26,427	10,286	25,055	7,519	15,802	36,307	171,555
Park	159,041	40,871	39,377	19,591	27,961	19,134	67,821	373,796
Petroleum	973	6,896	768	9,633	1,545	7,697	6,316	33,828
Phillips	9,312	9,973	15,660	45,494	10,582	22,143	69,246	182,410
Pondera	23,913	46,243	48,072	112,607	72,727	67,147	227,655	598,364
Powder River	2,479	7,090	1,958	8,532	6,984	17,828	10,560	55,431
Powell	20,926	30,253	9,439	19,559	10,918	16,786	28,504	136,385
Prairie	3,486	4,338	20,251	5,571	6,216	8,283	42,203	90,348
Ravalli	341,947	217,652	232,285	148,890	126,187	138,780	90,863	1,296,604
Richland	33,341	50,668	113,037	116,950	94,816	91,566	209,252	709,630
Roosevelt	16,774	50,922	41,214	93,245	47,337	79,168	150,922	479,582
Rosebud	14,526	22,072	49,360	24,410	26,424	35,320	89,620	261,732
Sanders	34,992	55,443	10,727	37,163	6,073	9,485	39,023	192,906
Sheridan	9,829	12,005	13,392	62,400	8,225	42,920	119,290	268,061
Silver Bow	12,890	7,275	8,269	7,755	17,655	5,726	9,121	68,691
Stillwater	58,543	37,958	47,087	70,327	40,482	60,206	120,269	434,872
Sweet Grass	19,247	22,091	23,195	19,874	15,971	15,571	41,289	157,238
Teton	25,668	39,725	75,104	98,582	55,009	92,164	302,045	688,297
Toole	9,173	25,124	24,483	83,912	17,200	64,874	143,439	368,205
Treasure	2,032	4,362	13,741	18,494	17,792	5,218	64,958	126,597
Valley	26,127	44,736	29,896	127,790	28,631	51,807	118,887	427,874
Wheatland	13,169	8,437	3,049	5,712	5,052	7,192	23,970	66,581
Wibaux	2,267	101	1,182	5,497	3,040	4,187	46,671	62,945
Yellowstone	259,502	357,051	371,386	260,568	220,271	181,154	366,312	2,016,244
	3,662,310	2,874,878	3,234,122	3,826,329	2,494,383	2,924,803	5,958,279	24,975,104

Ag Land Acres	Total acres in 20 to 39.9	Total acres in 40 to 59.9	Total acres in 60 to 79.9	Total acres in 80 to 99.9	Total acres in 100 to 119.9	Total acres in 120 to 139.9	Total acres in 140 to 159.9	Total
Beaverhead	3,539	2,901	1,537	2,860	1,109	3,739	3,016	18,701
Big Horn	2,039	3,994	2,710	7,537	3,700	7,462	5,834	33,276
Blaine	1,230	1,852	2,992	5,207	3,285	5,073	9,736	29,375
Broadwater	2,418	1,703	2,337	2,273	2,508	1,691	5,404	18,334
Carbon	4,837	5,119	3,807	6,885	5,204	9,109	10,545	45,506
Carter	843	1,407	747	3,708	861	1,970	3,053	12,589
Cascade	12,739	8,848	8,612	9,864	7,123	7,617	15,726	70,529
Chouteau	1,106	3,226	1,925	8,510	2,100	6,234	9,359	32,460
Custer	2,297	4,590	1,677	4,561	2,445	3,631	4,533	23,734
Daniels	528	1,258	894	5,660	626	2,943	4,103	16,012
Dawson	2,034	1,846	1,582	2,270	2,445	2,610	6,698	19,485
Deer Lodge	1,499	695	780	410	118	756	1,225	5,483
Fallon	757	912	783	2,323	1,091	1,232	5,953	13,051
Fergus	3,777	5,048	2,838	8,896	4,239	6,877	7,244	38,919
Flathead	11,176	5,847	6,683	4,906	3,326	3,209	3,515	38,662
Gallatin	19,387	10,002	7,610	8,097	9,587	6,338	17,155	78,176
Garfield	629	1,166	532	2,454	963	2,973	1,195	9,912
Glacier	2,015	5,166	3,072	11,372	2,625	4,055	10,618	38,923
Golden Valley	1,125	988	925	1,310	884	1,122	2,475	8,829
Granite	2,237	2,046	546	1,025	1,330	1,431	2,279	10,894
Hill	2,320	2,903	2,591	6,718	1,591	4,609	11,642	32,374
Jefferson	12,977	7,940	7,756	5,164	4,327	3,827	3,382	45,373
Judith Basin	940	2,149	1,766	2,720	1,233	3,329	5,059	17,196
Lake	9,723	8,907	10,854	14,574	4,744	7,321	9,491	65,614
Lewis And Clar	14,022	8,169	5,999	3,710	3,383	3,701	6,994	45,978
Liberty	645	1,985	1,131	3,631	428	3,539	3,683	15,042
Lincoln	2,100	712	602	427	225	247	460	4,773
Madison	14,034	5,678	4,673	6,463	4,366	5,008	7,268	47,490
Mccone	510	1,392	1,153	2,758	1,347	2,588	6,276	16,024
Meagher	2,170	1,292	1,082	838	957	786	1,369	8,494
Mineral	577	500	126	82	0	0	0	1,285
Missoula	8,800	4,432	2,945	1,364	967	1,941	1,839	22,288
Musselshell	9,383	6,857	2,349	4,704	1,750	2,709	5,679	33,431
Park	12,615	5,665	4,429	3,522	3,548	2,199	5,961	37,939
Petroleum	296	1,730	292	2,354	570	1,599	1,940	8,781
Phillips	1,198	1,739	1,780	4,818	1,228	3,805	7,145	21,713
Pondera	1,389	2,501	2,525	5,199	3,602	3,218	8,957	27,391
Powder River	738	1,814	577	2,041	1,327	2,958	2,133	11,588
Powell	4,015	5,685	1,695	2,748	1,502	2,026	2,739	20,410
Prairie	333	657	896	908	441	493	1,826	5,554
Ravalli	19,454	12,351	9,703	8,131	5,699	5,545	4,368	65,251
Richland	2,550	3,789	4,300	6,421	4,551	5,919	9,583	37,113
Roosevelt	2,311	5,958	3,616	7,834	3,909	6,713	10,767	41,108
Rosebud	2,256	3,133	2,637	3,739	3,007	2,895	7,222	24,889
Sanders	4,282	2,434	953	2,892	795	1,492	2,855	15,703
Sheridan	1,011	1,355	1,125	4,782	1,141	4,530	7,776	21,720
Silver Bow	3,251	1,877	2,113	1,286	1,983	1,900	1,981	14,391
Stillwater	7,478	4,014	3,230	5,384	3,132	4,483	6,987	34,708
Sweet Grass	2,027	2,703	2,382	3,031	1,383	2,502	4,101	18,129
Teton	2,645	2,699	4,393	5,941	3,358	5,872	13,631	38,539
Toole	1,378	2,228	2,207	7,023	1,542	4,642	7,533	26,553
Treasure	135	462	533	1,692	680	634	3,363	7,499
Valley	2,453	3,803	2,387	9,753	2,061	4,571	8,060	33,088
Wheatland	2,621	1,587	683	1,651	639	872	3,275	11,328
Wibaux	329	40	203	499	228	490	3,203	4,992
Yellowstone	10,863	12,064	9,468	11,337	6,910	8,501	13,286	72,429
	240,041	201,818	157,743	256,267	134,123	197,536	331,500	1,519,028

EXHIBIT #4
DATE 4-2-93
SB-435

EXHIBIT
DATE 4/2/93
SB 435

Forest Land Count	# in 15 to 19.9	# in 20 to 39.9	# in 40 to 59.9	# in 60 to 79.9	# in 80 to 99.9	# in 100 to 119.9	# in 120 to 139.9	# in 140 to 159.9	Total
Beaverhead	1	8	2	2	0	0	0	0	13
Big Horn	1	4	3	0	0	0	0	0	8
Blaine	0	0	0	0	0	0	0	0	0
Broadwater	0	4	3	0	0	0	0	0	7
Carbon	4	4	1	1	0	0	0	0	10
Carter	0	1	0	0	0	0	0	0	1
Cascade	30	37	11	5	2	0	0	0	85
Chouteau	1	2	0	1	1	0	0	0	5
Custer	0	0	0	0	0	0	0	0	0
Daniels	0	0	0	0	0	0	0	0	0
Dawson	0	0	0	0	0	0	0	0	0
Deer Lodge	3	17	4	3	3	0	0	0	30
Fallon	0	0	0	0	0	0	0	0	0
Fergus	31	58	29	12	13	7	2	0	152
Flathead	344	641	267	141	99	55	41	36	1,624
Gallatin	19	46	18	10	2	5	1	2	103
Garfield	0	0	0	0	0	0	0	0	0
Glacier	0	0	0	0	0	0	0	0	0
Golden Valley	0	4	1	0	0	0	0	1	6
Granite	3	15	9	6	6	1	1	1	42
Hill	0	0	0	0	0	0	0	0	0
Jefferson	15	28	17	12	5	2	1	1	81
Judith Basin	2	0	0	1	0	0	0	0	3
Lake	46	147	50	30	19	8	9	1	310
Lewis And Clar	19	56	21	10	13	3	1	3	126
Liberty	0	0	0	0	0	0	0	0	0
Lincoln	175	396	193	105	58	47	26	21	1,021
Madison	6	24	5	5	2	0	3	0	45
Mccone	0	0	0	0	0	0	0	0	0
Meagher	5	11	5	2	1	0	0	0	24
Mineral	34	92	54	21	22	13	12	5	253
Missoula	150	249	113	55	42	22	23	18	672
Musselshell	16	29	19	13	1	0	0	0	78
Park	4	19	8	3	0	3	0	0	37
Petroleum	0	0	0	0	0	0	0	0	0
Phillips	0	0	0	0	0	0	0	0	0
Pondera	0	0	0	0	0	0	0	0	0
Powder River	1	3	1	1	0	0	0	0	6
Powell	12	23	14	12	13	6	7	2	89
Prairie	0	0	0	0	0	0	0	0	0
Ravalli	143	205	94	44	22	11	9	3	531
Richland	0	0	0	0	0	0	0	0	0
Roosevelt	0	0	0	0	0	0	0	0	0
Rosebud	4	15	2	1	0	0	0	0	22
Sanders	147	233	123	45	29	19	12	8	616
Sheridan	0	0	0	0	0	0	0	0	0
Silver Bow	8	14	8	6	2	0	0	0	38
Stillwater	0	5	1	0	0	0	0	0	6
Sweet Grass	1	2	2	0	0	0	0	0	5
Teton	0	0	0	0	0	0	0	0	0
Toole	0	0	0	0	0	0	0	0	0
Treasure	0	0	0	0	0	0	0	0	0
Valley	0	0	0	0	0	0	0	0	0
Wheatland	2	1	0	0	0	1	0	0	4
Wibaux	0	0	0	0	0	0	0	0	0
Yellowstone	1	1	0	0	0	0	0	0	2
	1,228	2,394	1,078	547	355	203	148	102	6,055

+10 yr. phase in

passed House 3 Rdg.

GREENBELT BILLS

Gilbert

Provision	HB 477 (Swanson)	HB 334 (Ellis)	SB 182 (Doherty)	HB 643 (~~Brown~~)
Def. of Ag Property	80+ Acres	160+ Acres	any showing proof	"used primarily for raising products"
Def. of Rural Res. Property	5-80 Acres at 1.93%	20-160 Acres at 1.93%	none	20-160 ac. ~~20+ Acres~~
Homestead Exemption	none	none	none	none ~~no change~~
Exceptions for Ag Class (if not automatic)	$3,000 proof of production Annual Certification	$1,500 proof of production	$5,000 proof of production	tightens def. of "primarily ag. use"; no $ change
Def. of Forest Land	80+ Acres	no change	no change	no change

Tax

Ave. Grazing rate x 7

Feds $1,000 production

Gilbert 20-160 ac.

Tax x4 x5 x6 or x7
current tax
No homestead exemption

EXHIBIT 6
DATE 4-23-93
SB 435

TESTIMONY PRESENTED
TO HOUSE TAXATION COMMITTEE
APRIL 2, 1993

EXHIBIT 7
DATE 4/2/93
SB SB 435

Mr. Chairman and members of the committee . . .

I'm Bruce A. Nelson Sr. from Great Falls. I've been in business 45 years. I'm a Past president of the state REALTORS Association, state Home Builders Association, state Farm & Land Bureau, and Montana Council of Boy Scouts of America.

I urge that you not accept the senates version of Bill 435. I urge your committee to hold to your prior decision of a moderate increase in this taxation. Annual certification of any amount to qualify for a lower tax category puts a horrible burden on many people and will be a bureaucratic nightmare. Good government keeps it simple, this is complicated. This makes the people the servants of the bureaucrats and is terrible legislation--unfair & inequitable.

Montana people do not deserve to be harassed with this kind of legislation. This bill will be a terrible hardship on many Montana families. I recognize the inequities of our present tax situation but this bill is trying to correct prior errors of prior legislative action by a crushing blow to unsuspecting Montana families.

This bill is capricious, arbitrary, ill conceived, and is the worst kind of entrapment for many Montanans who will face real hardship over time ahead if it is enacted . . . in my opinion. Entrapment because many people would not have bought this type land, where taxes were low, had they had a clue that the state would come along later with such

exorbitant tax increases. Investors who have purchased this type property may have cause to rue the day they did not invest in other type property, their market is now seriously decreased, and the hungry tax collector now looms into their investment. How would you and I like this kind of tax on our investments in other areas? Think it over. This bill sounds like something a banana republic would enact--not something we should expect from a stable state like Montana. . . or are we really that unstable?

People build their lives around government policy and can be shattered by legislation like this. Surely with all the talent we have in the state of Montana we do not have to live with legislation of this kind. I think it will be a disgrace when all of us find out what this legislation, if passed will do to the people of the state of Montana and to our economy. Better to let the inequities that now exist continue than to replace those inequities with even greater inequities. Two wrongs don't make a right.

There are a lot of Montana people <u>on hold</u> right now who are waiting to see what happens with this session before investing. We'll lose people by this act. Many feel only the wealthy will be able to afford land in the country and our own Montana people will have their dreams crushed. This bill smells of special interest pressure and is a looming tragedy for the people of Montana.

EXHIBIT 8
DATE 4/2/93
SB 435

FOR YOUR IMMEDIATE ATTENTION!FOR YOUR IMMEDIATE ATTENTION!

Montana small parcel land owners cannot bear a 700% increase in property taxes.

Land parcels of 20 to 160 acres are slated for tax reclassification and will be unfairly subject to the same tax level as in-town residential properties. The properties in question are mostly undeveloped, investment and retirement properties. Many represent the hard earned savings of Montana residents who, in good faith, have invested their life savings in raw Montana land. These parcels represent the dream of Montana land ownership shared by most Montanans. Prohibitive, inequitable property taxes will strip our citizens of that dream.

The Office of Budget and Program Planning reports that there are an estimated 100,529 such parcels owned by 75,397 owners. That equates to 10% of all Montanans being directly affected by this legislation. The entire state will be affected by a LOSS OF REVENUE potential caused by this proposed tax increase.

Yes, the proposed legislation could cause a loss rather than increase in dollars reaching our government coffers. This crippling tax change will increase TAX DEFAULT for those small land investors unable to raise additional funds and will deter land investment. Please remember, these properties generate no income to help offset such an inflationary increase in property tax.

Consider the following:

The properties generate no income and are not self-supporting.
The land is largely not serviced by public improvements, services, etc.
Small parcels of raw land do not receive the same level of public consideration and should not be taxed as residential.
All taxes on these lands are paid with funds unrelated to the land.
Most owners do not have the resources to meet a 700% increase in property taxes.
Much of this property will have to be sold by current owners. However, investors will be far less inclined to invest in Montana land given the proposed restrictive taxes.
When the property cannot be sold, it will revert to the counties for tax default.
Once the counties own the land, your proposed tax revenue is lost.

How much tax default property would Montana county governments like to own?

At this time of increasing federal income and excise taxes, a state sales tax, and possible federal sales tax, we suggest that an ECONOMIC IMPACT STUDY is in order before subjecting any portion of our citizenry to a 700% tax increase? Please, think carefully and act wisely. Do not allow this poorly devised and inequitable tax to kill Montana's land ownership initiative. Let our citizens hold on to their land and their futures.

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Great Falls Homebuilders Assoc.
452-HOME

Flathead Home Builders Ass
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

Nancy Lien Griffin, Executive Director
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

Information record

SB 426
Clarifies Use of SID Revolving Funds

Recommend:
Do Pass

Nancy Griffin, Executive Officer, Montana Building Industry Association. Representing 6 local homebuilder associations with 720 members, registering 31,007 employees. We urge your support of SB 426 for the following reasons:

1. Guarantees Investor Security

Without clarifications in Montana's law which conform to current operating practice with regard to guarantee of Special Improvement District bonds, investors will be reluctant to invest in Montana's communities. These investors which help to build our state's necessary infrastructure add long term value to Montana communities.

2. Encourages Property Owner Financing of Local Infrastructure Improvements.

Montana's local governments have relied upon the security of SID's to fund infrastructure, water and sewer improvements which would have not otherwise been available to complete necessary projects. Current law dictates that revolving funds are responsible for only 5% of the total outstanding liabilities. Property values are held in security for liability and local governing bodies have the authority to establish procedures and conditions which protect local taxpayers.

3. Montana's current growth dictates the need for security in infrastructure and housing support financing.

In many of Montana's major growth areas, the need for street, water and sewer improvements have outdistanced the ability of local governments to keep up. The continued use of SID's places neighborhood growth responsibilities upon the property owners within that neighborhood.

Please support SB 426, necessary to assure the continued security and use of SID and RSID infrastructure financing.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Taxation COMMITTEE BILL NO. SB 426 SB 428 SB 435

DATE 4/2/93 SPONSOR(S) Kennedy, Aklestad, Grosfield

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
TONY KENDALL Box 810 RED LODGE, MT	CARBON COUNTY	426	X	
Ward Swanson Box 2559 Rigs MT 59103	Carbon County	426	X	
MONA NUTTING Box 190 Silesia, MT. 59041	CARBON CO.	426	X	
Michael W Schestedt	Missoula County	426		X
J. Shontz	Carbon Cty	426	X	
Mike Mathews	Yellowstone Co	426	V	
Shelly Laine	Shelly Laine	426		X
John Youngberg	City of Belgrade	422		X
Lorri Tubbs	DNRC	421		
Nancy Griffing	Montana Bldg Industry Assn.	426		X
Larry Gallagher	City of Kalispell	426		X
Brian McKenzie	Dorsey & Whitney	426	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

_____ COMMITTEE BILL NO. _____

DATE _____ SPONSOR(S) _____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Lorna Franke	MT. Farm Bureau	SB 435		C
John Bloomquist	MT. Stockgrowers	437		+

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.