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Honorable Austin Knudsen
Attorney General
215 N. Sanders Street
Helena, MT 59601

Re: Request for Opinion

Dear Attorney General Knudsen:

The provisions of MCA 15-10-420 limit a taxing jurisdiction's ability to levy mills "sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years." County mills are subject to this provision, thus when taxable values increase in a county, the number of mills authorized will decrease. Likewise, it is clear that the 33 mills under MCA 20-9-331(1) are subject to this same provision, as are the 22 mills under MCA 20-9-333(1), and the 40 mills under MCA 20-9-360(1). These provisions are intended to control the growth of property tax revenue for all applicable mill levies.

The State of Montana has continued to levy 95 mills, year after year, instead of reducing the levy authority as required by MCA 15-10-420. Increased appraised values under this reappraisal cycle will result in the over-levying of property taxpayers for the mills subject to MCA 15-10-420 unless the State is instructed to follow the law and reduce the levying authority. It should be noted that the education mills, which cumulatively add up to 95 mills and are subject to the restrictions in MCA 15-10-420, have remained at 95 mills for their entire duration. At no time has the state levied less than 95 mills, thus there is no possibility of having any "banked mills" as

authorized under MCA 15-10-420(1)(b). The levying authority of the state, given the increases in appraised values this cycle, must be adjusted down.

We write to request an opinion as to whether the provisions of the mill levy restrictions pursuant to MCA 20-9-331, MCA 20-9-333, and MCA 20-9-360 aggregately impose a maximum number of mills set at 95, thereby limiting any carry forward mills to mills authorized and not levied *under* the maximum of 95 as defined in 15-10-420(b). The same question is relevant to the 1 ½ mills authorized in MCA 20-25-439(1) for Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties. This matter is one of statewide concern. Counties are responsible for preparing the tax bill for all taxing jurisdictions and have a duty to ensure the tax bills are correct. We anticipate another request from the State of Montana to levy the 95 mills without performing the calculation required under 15-10-420, thereby over levying property taxpayers across Montana.

Prior Relevant Authorities

MCA 20-9-331(1) provides that, subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-5-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this mill levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner.

MCA 20-9-333(1) provides that, subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-5-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this mill levy must be apportioned to the support of the elementary BASE funding programs of the high school districts in the county and to the state general fund in the following manner.

MCA 20-9-360(1) provides that, subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except for property for which a tax or fee is required under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-5-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.

MCA 20-25-439(1), provides that, subject to 15-10-420, the boards of county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties shall in each calendar year levy a tax of 1 ½ mills on the dollar of all taxable property, real and personal, located within the respective county.

MCA 15-10-420 **Procedure for calculating levy** has the following relevant parts:

(1)(a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half the average rate of inflation for the prior 3 years. It goes on to say that the maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.

Subsection (1)(b), provides that, a governmental entity that does not impose the maximum number of mills authorized under subsection 1(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:
(a) school district levies established in Title 20; or
(b) a mill levy imposed for a newly created regional resource authority

(8) provides that the department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

New Statute (HB 587 – 2023)

HB 587 made changes to three of the above referenced school funding statutes. Those changes should be noted but do not appear to have relevance to the question. The changes are referenced below:

20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding

programs of the school districts in the county and to the ~~state general fund school equalization and property tax reduction~~ account established in [section 1] in the following manner.

20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the ~~state general fund school equalization and property tax reduction~~ account established in [section 1] in the following manner.

20-9-360. State equalization aid levy. Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the ~~state school general equalization fund and property tax reduction~~ account established in [section 1] for state equalization aid to the public schools of Montana.

Relevant Facts

The State of Montana, pursuant to 15-10-420 (8), is calculating, on a statewide basis, the number of mills to be imposed for purposes of 15-10-109, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. County commissioners of each jurisdiction are performing administrative duty by placing the state calculated mills on the tax bills.

Currently and historically the state has calculated the number of mills to be imposed under the assumption that carry forward mills are allowed when the 15-10-420 calculation indicated a higher level of levying authority than the mill caps defined in 20-9-331, 20-9-333, and 20-9-360. Use of this calculation and the accumulation of carry forward mills has resulted in the mill levy calculation as given to county commissioners to remain steady over many years.

Analysis and Conclusion

With the exception of MCA 15-10-109, the 6 mill tax levy for the university system, the school levy funding authority refers back to MCA 15-10-420 for the calculation of mills. That includes elementary, high school, equalization and vocation school levies.

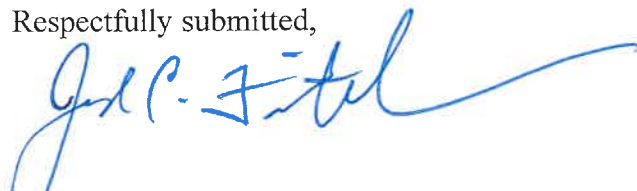
MCA 15-10-420 (5) provides that subject to subsection (8), subsection (1)(a) does not apply to: (a) school district levies established in Title 20 which indicates that the calculation described in Section (1) does not apply but rather Section (8) does.

Section 8 provides **that the department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of MCA 15-10-109, MCA 20-9-331, MCA 20-9-333, MCA 20-9-360, and MCA 20-25-439.** However, **the number of mills calculated by the department may not exceed the mill levy limits established in those sections.** The mill calculation must be established in tenths of mills. If the mill levy calculation does result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

The key word in section 8 is “calculated”. If it is assumed that the calculation in MCA 15-10-420 is to be used as a means to calculate the maximum mill levy, but sections 5 and 8 are designed as a safeguard to further limit that calculation to at or less than the authorized mills in MCA 20-9-331, MCA 20-9-333, MCA 20-9-360, and MCA 20-25-439 then it is reasonable to determine that if the calculation exceeds the authority in any of those sections the state may only request a levy of that year’s calculated authorized mills and may not calculate, retain or utilize carry forward mills.

It is my conclusion that the department has incorrectly interpreted the statutes reference above to allow for carry forward mills when calculating statewide school levies and has levied carry forward mills in conflict with the restrictions placed by the legislature. As such, I respectfully request an opinion as to whether the State of Montana has the authority to capture carry forward mills for future utilization as described in MCA 15-10-420 (1)(a)(b) or if the restrictions noted in MCA 15-10-420 (5) and (8) allow only an annual calculation up to the maximum allowable in MCA 20-9-331, MCA 20-9-333, MCA 20-9-360, and MCA 20-25-439 or the calculation performed with the formula described in MCA 15-10-420(1), whichever is less.

Respectfully submitted,



Jed C. Fitch
Beaverhead County Attorney