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Legal Opinion 2018-021

TO: Mayor, John Engen, Dale Bickell, John Wilson, Dennis Bowman, Logan McInnis, Leigh Griffing, Scott Paasch, Steve Johnson, Marty Rehbein, Department Attorney

FROM: Jim Nugent, City Attorney

DATE October 30, 2018

RE: Several Montana State Laws recognize the authority of Montana Cities and Towns to, if necessary, utilize special judgement levies or issue bonds to pay judgements or settlements against a Montana municipality.

FACTS:

For several months now, the United States Forest Service (USFS) has requested as part of a USFS permit issuance, that the City of Missoula obtain liability insurance for the Rattlesnake mountain dams that are part of the Missoula Water system. The Montana Municipal Interlocal Authority (MMIA) the current provider of the City of Missoula's liability insurance coverage has had difficulty locating any private liability insurance coverage that provides liability insurance coverage to the owners of dams. However, Montana municipalities do have an option of self-insurance with respect to the Rattlesnake mountain dams pursuant to the existence of statutory authority to adopt special judgment or settlement levies or issue bonds, if necessary, to pay judgments or settlements.

ISSUE:

If necessary, do Montana municipalities have special specific legal authority to utilize for addressing payment of judgments?

CONCLUSION:

Several provisions of Montana state law recognize the authority of Montana municipalities to levy special judgment tax levies or issue bonds, if necessary, to pay judgments or settlements.

LEGAL DISCUSSION:

Montana municipalities do have an option to self-insure potential liabilities, such as liability associated with the Rattlesnake mountain dams.

Several Montana state laws recognize the authority pursuant to Montana state municipal government law to, if necessary, adopt special judgment levies to pay judgments or issue bonds in order to pay judgments that a Montana municipality might be obligated to pay. The following Montana state laws recognize the authority of a Montana municipality to adopt special tax levies or to issue bonds to pay for judgments or settlements.

Section 2-9-316 MCA JUDGMENTS AGAINST MUNICIPALITIES provides:

“2-9-316. JUDGMENTS AGAINST GOVERNMENTAL ENTITIES. A political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

- (1) Insurance;
- (2) The general fund or any other funds legally available to the governing body;
- (3) A PROPERTY TAX, OTHERWISE PROPERLY AUTHORIZED BY LAW, COLLECTED BY A SPECIAL LEVY AUTHORIZED BY LAW, in an amount necessary to pay any unpaid portion of the judgment or settlement;
- (4) PROCEEDS FROM THE SALE OF BONDS ISSUED BY A county, CITY, or school district FOR THE PURPOSE OF DERIVING REVENUE FOR THE PAYMENT OF THE JUDGMENT OR SETTLEMENT LIABILITY. The governing body of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds.” (emphasis added).

Section 7-6-4015 MCA PAYMENTS OF JUDGMENTS provides:

“7-6-4015. PAYMENTS OF JUDGMENTS. (1) Judgments against a local government that are not covered by insurance may be paid:

- (a) From the general fund, or
- (b) From the fund or funds supporting the local government operation that incurred the judgment,

- (2) Judgments that are to be paid from the general fund:
 - (a) must be paid in the current fiscal year if there is sufficient money in the general fund to pay both the judgment and the general fund appropriations for the current fiscal year; or
 - (b) MUST BE PAID FROM ADDITIONAL TAX LEVIES made in each of the next 3 years if general fund money is insufficient to pay the judgment in the current fiscal year.” (emphasis added).

Section 7-6-4453. MCA CERTAIN SPECIAL MILL LEVIES ALSO AVAILABLE.

“7-6-4453. CERTAIN SPECIAL MILL LEVIES ALSO AVAILABLE. (1) The all-purpose mill levy does not include the levies imposed for bonded indebtedness, TO PAY JUDGMENTS or tax protest refunds, or for special improvement district revolving funds of municipalities. Subject to 15-10-420, ADDITIONAL LEVIES MAY BE MADE IN ADDITION TO THE ALL-PURPOSE MILL LEVY, as provided in subsection (2). Sections 7-6-4451, 7-6-4454, 7-6-4455, and this section may not be construed as repealing those statutes providing for multiple separate levies. (2) EXTRAORDINARY

LEVIES OTHERWISE AUTHORIZED TO PAY FOR BONDED INDEBTEDNESS, JUDGMENTS, tax protest refunds, or special; improvement district revolving funds MAY BE MADE BY MUNICIPALITIES IN ADDITION TO THE ALL PURPOSE MILL LEVY PROVIDED FOR IN 7-6-4451, 7-6-4454, 7-6-4455, and this section.” (emphasis added).

Section 15-10-420 MCA PROCEDURE FOR CALCULATING LEVY provides in pertinent part:

“15-10-420. PROCEDURE FOR CALCULATING LEVY

(9) (a) The provisions of subsection (1) do not prevent or restrict: (i) A JUDGMENT LEVY UNDER 2-9-316, 7-6-4015, or 7-7-2202.” (emphasis added).

Note that section 7-7-2202 MCA cross referenced to in subsection 15-10-420 (9)(a)(i) MCA above pertains to Montana counties and has no relevance to municipal special judgment levies.

CONCLUSION:

Several provisions of Montana state law recognize the authority of Montana municipalities to levy special judgment tax levies or issue bonds, if necessary, to pay judgments or settlements.

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/s/ Jim Nugent

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