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Legal Opinion 2018-022

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 November 13, 2018

RE: Montana state law expressly authorizes Montana political subdivisions to self-insure in whole or in part.

FACTS:

The United States Forest Service (USFS) has requested the City of Missoula to provide \$1 million liability insurance as part of a USFS permit issuance 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 does not provide liability insurance for breached dams and has had difficulty locating any private liability insurance coverage that provides liability insurance coverage for breaches of dams. As an alternative to liability insurance, the City of Missoula does 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. The existence of this alternative could be exercised in conjunction with the City of Missoula being able to assert any legal defenses available to the City of Missoula.

ISSUE:

- (1) Are Montana municipal governments allowed to self-insure potential liabilities?
- (2) If necessary, as an alternative to liability insurance is there special specific legal authority for Montana municipalities to utilize for addressing payment of judgments or settlements?

CONCLUSION:

- (1) Yes, Montana state law expressly authorizes Montana political subdivisions to self-insure in whole or in part.

(2) Yes, the authority of Montana municipalities to levy special judgment tax levies or issue bonds, if necessary, to pay judgments or settlements is available to Montana municipalities as an alternative to the purchase of liability insurance.

LEGAL DISCUSSION:

Section 7-1-4124 MCA of municipal government state law is entitled “POWERS”. Subsection 7-1-4124 (20) MCA states that Montana municipalities have the power to “(20) purchase insurance and ESTABLISH SELF-INSURANCE PLANS.” (emphasis added).

Title 2, chapter 9 MCA is entitled “LIABILITY EXPOSURE AND INSURANCE COVERAGE.” Section 2-9-211 MCA is entitled “POLITICAL SUBDIVISION INSURANCE”. The first sentence of subsection 2-9-211 (1) MCA states:

“(1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or SELF-INSURANCE PLAN WHOLLY OR IN PART.” (emphasis added).

Subsection 7-1-4122 (2) MCA pertaining to limits on municipal liability provides that:

“(2) A local government has the right BUT NOT THE DUTY TO PURCHASE INSURANCE TO PROTECT AGAINST CLAIMS FOR INJURY TO A PERSON OR PROPERTY.” (emphasis added).

If the United States Forest Service (USFS) insists that the City of Missoula provide \$1 million liability insurance to obtain a permit; but if such liability insurance is not available for purchase, Montana State law expressly allows Montana municipal governments to self-insure liabilities. 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 of a municipal government 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. Montana state laws recognizing the authority of a Montana municipality to adopt special tax levies or to issue bonds to pay for judgments or settlements. Basically, the state laws in part facilitate the ability of Montana municipal governments to self-insure itself, in whole or in part. Montana municipal governments could also utilize their general fund to pay liabilities.

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:

- (1) Yes, Montana state law expressly authorizes Montana political subdivisions to self-insure in whole or in part.
- (2) Yes, the authority of Montana municipalities to levy special judgment tax levies or issue bonds, if necessary, to pay judgments or settlements is available to Montana municipalities as an alternative to the purchase of liability insurance.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

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