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Legal Opinion 2011-022

TO: John Engen, Grp. City Council, Bruce Bender, Steve King, Kevin Slovarp, Gregg Wood, Phil Smith, Doug Harby, Brentt Ramharter

CC: Dept. Atty.

FROM: Jim Nugent, City Attorney

DATE November 17, 2011

RE: Statutorily authorized voter elections for local option county-wide motor-fuel excise tax up to 2 cents per gallon.

FACTS:

City Council interest and inquiry about the statutorily authorized local-option gas tax (motor fuel excise tax) arose during a City Council Pedestrian Connection Subcommittee discussion.

ISSUES:

- 1) Jurisdictionally, what local governments have statutory authority pursuant to Montana state law to propose a voter approved local-option motor-fuel excise tax?
- 2) What is the maximum amount of local-option motor-fuel excise tax that voters may approve?
- 3) How would monies generated by a local-option motor-fuel excise tax be distributed?
- 4) What may the voter approved local-option motor-fuel excise tax revenues be utilized for?

CONCLUSIONS:

- 1) Montana state law, title 7, chapter 14, part 3 MCA authorizes voter approved local-option motor-fuel excise taxes on a county wide basis
- 2) Pursuant to 7-14-301(2) MCA, voter-approved motor-fuel excise taxes in increments of 1 cent per gallon up to a maximum of two cents per gallon are authorized.
- 3) Pursuant to 7-14-303 MCA, allocation of revenue and disposition of funds from a voter-approved county local-option motor-fuel excise tax between a county and an incorporated municipality is distributed as mutually agreed to by the county and municipality pursuant to an interlocal agreement.

4) Pursuant to 7-14-302 MCA, the voter-approved local-option fuel excise tax revenue may be used “only for the construction, maintenance and repair of public streets and roads.”

LEGAL DISCUSSION:

Initially, it should be noted that pursuant to 7-1-112 MCA, entitled “Powers Requiring Delegation,” Montana local governments with self-government powers are prohibited the power to authorize a tax on income or the sale of services or goods unless the power is specifically delegated by law. The Montana State Legislature has authorized a county-wide local-option motor-fuel excise tax, the provisions of which are set forth in title 7, chapter 14, part 3 MCA entitled “Local Option Motor Fuel Excise Tax.” There are four sections of law set forth in sections 7-14-301 through 7-14-304 MCA.

In short summary, the local-option motor-fuel excise tax law authorizes county-wide voter approval of a local-option motor-fuel excise tax in increments of 1 cent per gallon up to 2 cents per gallon countywide. The motor-fuel excise tax revenues generated by a voter-approved local-option tax is to be distributed pursuant to an interlocal agreement between the county and the municipality. Pursuant to 7-14-302 MCA, the voter-approved local-option motor-fuel excise tax revenues may be used “only for the construction, reconstruction, maintenance and repair of public streets and roads.”

The four sections of law that comprise the “Local Option Motor Fuel Excise Tax,” sections 7-14-301 through 7-14-304 MCA, are set forth below for the general information of the reader of this legal opinion.

7-14-301. Local option motor fuel excise tax authorized -- definitions. (1) A motor fuel excise tax may be imposed within a county:

- (a) by the people of the county by initiative; or
- (b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

(3) The initiative or referendum must specify that the tax is to be collected by the county treasurer.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the initiative or referendum.

(5) By the 25th day of each month, each retail seller of gasoline shall render a monthly statement to the county treasurer of all gasoline sold during the preceding calendar month in the county in which it is sold to the ultimate consumer and other information that the county treasurer requires in order to administer the motor fuel excise tax.

(6) The county treasurer shall establish procedures to provide a refund to a person who has paid the tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(7) In this part, the terms "gasoline", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201. (Emphasis added).

7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 may use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the retail seller for the cost of compliance with this part.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel excise tax. (1) A county that imposes a motor fuel excise tax shall establish a motor fuel excise tax account. When allocating the tax under subsection (2), county commissioners shall take into account any funding requested by a transportation district in the county.

(2) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be deposited into the county's motor fuel excise tax account and apportioned among the county and municipalities in the county according to one of the following methods that is mutually agreed upon by the county and municipalities:

(a) by distributing 50% to the county and 50% to the incorporated cities and towns within the county apportioned on the basis of population. The distribution to a city or town must be determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county must be determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(b) by basing the distribution upon the proportion of road miles outside municipalities and street miles within each municipality as a ratio of total road and street miles in the county, using the most recent public road miles available from the department of transportation; or

(c) by using any other method agreed upon by the affected county and municipalities as determined by an interlocal agreement.

(3) All taxes, interest, and penalties collected by the county treasurer under this part must be promptly deposited into the account established in subsection (1). (Emphasis added).

7-14-304. Collection of delinquent tax -- interest and penalty -- statute of limitations. (1) Motor fuel taxes imposed pursuant to 7-14-301 and collected by a retail seller but not transmitted to the county treasurer are delinquent after the date that they are due to the county treasurer and become a lien upon all real and personal property owned by the retail seller in the county. The county shall collect the delinquent motor fuel taxes in the manner that delinquent personal property taxes are collected.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period

expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.

CONCLUSIONS:

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- 3) Pursuant to 7-14-303 MCA, allocation of revenue and disposition of funds from a voter-approved county local-option motor-fuel excise tax between a county and an incorporated municipality is distributed as mutually agreed to by the county and municipality pursuant to an interlocal agreement.
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/s/
Jim Nugent, City Attorney

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