

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2014-011

**TO:** Mayor John Engen, City Council, Bruce Bender, Leigh Griffing, Scott Paasch, and Marty Rehbein

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** March 4, 2014

**RE:** Montana's Disaster and Emergency Services laws authorize municipal governments to levy up to 2 mills per year for addressing disasters or emergencies, including snowstorms that is in addition to the general statutory maximum number of mills allowed to be levied.

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### **FACTS:**

The Missoula community recently experienced the second most snowfall for the month of February in Missoula since National Weather Service records were kept. The final week of February concluded with multiple heavy snowfalls and multi-day blizzard conditions that significantly impacted and affected the Missoula community as well as the City of Missoula city general fund budget with snow plowing, snow removal and other winter storm related city expenses.

### **ISSUE(S):**

Does Montana state law allow municipal governments to levy emergency taxes for addressing disasters or emergencies that is in addition to the maximum taxes that may normally be levied each budget year?

### **CONCLUSION(S):**

Yes, Montana's disaster emergency services laws authorize a Montana municipal government to levy up to 2 mills for a statutorily defined disaster or emergency, including snowstorms. The two (2) mills may be levied in addition to the maximum normal mill levy each budget year.

## **LEGAL DISCUSSION:**

Title 10, chapter 3, Montana Code Annotated is entitled “DISASTER AND EMERGENCY SERVICES”. Subsection 10-3-103(3) of this chapter defines the term “disaster to include snowstorms and windstorms as well as numerous other natural or artificial causes. Subsection 10-3-103(3) MCA defines disaster to mean:

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

Subsection 10-3-103 (7) MCA defines “emergency” to mean:

(7) “Emergency” means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize. (emphasis added)

Title 10, chapter 3, part 4 MCA is entitled “LOCAL AND INTERJURISDICTIONAL PLANNING AND EXECUTION”. Section 10-3-405 MCA is entitled “LEVYING EMERGENCY TAX-DISPOSITION OF SURPLUS”. Section 10-3-405 MCA authorizes up to 2 mills in any one year for levying emergency millage. Section 10-3-405 MCA provides as follows:

**10-3-405. Levying emergency tax -- disposition of surplus.** (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies. (emphasis added)

Title 15, chapter 10 MCA is entitled “PROPERTY TAX LEVIES”.. Section 15-10-420 MCA is entitled “PROCEDURE FOR CALCULATING LEVY. Section 15-10-420 MCA is a lengthy

law nearly two complete pages in length in its codified form. Subsection 15-10-420(1) MCA generally sets forth the procedure for calculating mill levies to be imposed on real property and several subsequent subsections addressing various aspects of calculating property tax levies. Subsection 15-10-420(9) MCA is the subsection that authorizes that emergency tax levies adopted pursuant to section 10-3-405 MCA are in addition to the normal maximum property tax levy limit imposed by subsection 15-10-420(1) MCA. Subsections 15-10-420(1) and (9) MCA provide as follows:

**15-10-420. Procedure for calculating levy.** (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 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 value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) 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.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

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(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;
- (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;
- (iv) a levy for the support of a study commission under 7-3-184;
- (v) a levy for the support of a newly established regional resource authority;
- (vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or
- (vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

With respect to another aspect of a municipal government addressing emergencies, it should also be noted that pursuant to section 7-5-4303 MCA, if necessary to address an emergency, including a storm emergency, the city council may proceed in any manner which in the judgment of three-fourths of the members of the city council present at the meeting believe will best meet the emergency and serve the public interest without advertising for bids. Section 7-5-4303 is

entitled "EXEMPTIONS FROM BIDDING OR ADVERTISING REQUIREMENTS FOR CERTAIN CONTRACTS". Section 7-5-4303 MCA provides as follows:

**7-5-4303. Exemptions from bidding or advertising requirements for certain contracts.** (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

**CONCLUSION(S):**

Yes, Montana's disaster emergency services laws authorize a Montana municipal government to levy up to 2 mills for a statutorily defined disaster or emergency, including snowstorms. The two (2) mills that may be levied in addition to the maximum normal mill levy each budget year.

OFFICE OF THE CITY ATTORNEY

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Jim Nugent, City Attorney

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