



Montana Legislative Services Division
Legal Services Office

February 15, 2012

TO: Sen. Eric Moore

FROM: Bart Campbell
Staff Attorney

RE: Request for legal opinion on acceptable use of per capita fees levied on livestock.

ISSUE: May per capita fees levied on livestock be used to offset the current deficit accrued by the Board of Horseracing or to repay any loans made to the board?

ANSWER: Article XII, section 1(2), of the Montana Constitution authorizes levies on livestock but provides that the revenue generated by the levies must be used solely for the purposes of the levies. The per capita fees authorized in 15-24-921, MCA, must be used for the purpose of aiding in the payment of salaries and all expenses connected with the enforcement of the livestock laws and for the payment of bounties on wild animals. Because the use of the per capita fees authorized in 15-24-921, MCA, is specific, the fees must be used for the specified purposes. Any other use of the fees would violate the provisions Article XII, section 1(2), of the Montana Constitution.

DISCUSSION: As of January 12, 2012, the Board of Horseracing was reported to be operating with a deficit of more than \$500,000. Apparently the Department of Livestock has received a loan from the Department of Administration to help with the deficit and may intend to use the per capita fees on livestock authorized in 15-24-921, MCA, to cover the loan or reduce the Board of Horseracing's deficit until certain fees and other proceeds collected by the Board of Horseracing can be used to replace the per capita fees.

As stated above, 15-24-921, MCA, provides that per capita fees must be used for the purpose of aiding in the payment of salaries and all expenses connected with the enforcement of the livestock laws and for the payment of bounties on wild animals. Article XII, section 1(2), of the Montana Constitution authorizes levies on livestock and agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. The argument cannot be made that diverting the per capita fees in some way constitutes livestock promotion and therefore would be a valid use of the fees. Article XII, section 1(2), goes on to state that: "Revenue derived shall be used solely for the purposes of the levies." The intended use of the per capita fees set out in 15-24-921, MCA, is specific and this section makes no mention of promoting livestock. Under the constitutional mandate the fees must be used for their stated purpose.

On its web page the Department of Livestock describes per capita fees as follows:

Per capita fees are per-head fees charged on livestock. Authorized by Montana Code Annotated 15-24-921, per capita fees are assessed on "all poultry and bees,

all swine three months of age or older, and all other livestock nine months of age or older." The fees help fund the department's animal health programs, brands enforcement, theft investigation and recovery, and predator control.

...

Everyone benefits from programs funded by per capita fees. Livestock producers benefit from programs to monitor animal health, monitor and restrict livestock imports, track animal movements, prevent and investigate livestock theft, and manage predators. The general public benefits from programs that prevent the spread of animal diseases to humans.

Using per capita fees to repay a Board of Horseracing loan cannot be construed as enforcing livestock laws and is certainly not in the scope of uses for which the department currently expends those funds.

Intradepartmental loans are authorized in 17-2-107, MCA. However, in this case such a loan would violate the provisions of Article XII, section 1(2), of the Montana Constitution. In addition, 17-2-107(2)(a) provides that a loan may only be made: "if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended." At present there are no meetings scheduled for the Board of Horseracing and the executive director for the board has been fired. Even if the transfer of the per capita fees were not unconstitutional, there is no evidence that the Board of Horseracing has the financial wherewithal to meet the repayment requirements of 17-2-107, MCA. The Attorney General has issued an opinion pertaining to interdepartmental loans also authorized under 17-2-107(2)(a). In that opinion the Attorney general held that the "reasonable evidence" language in 17-2-107(2) is a clear indication that the borrower must actually anticipate income to repay the loan and that the reliance on the possibility of a supplemental appropriation sometime in the future does not meet the reasonable evidence of future income requirement of 17-2-107(2). 42 A.G. Op. 123 (1988).

CONCLUSION: Per capita fees levied pursuant to 15-24-921, MCA, are required by Article XII, section 1(2), of the Montana Constitution to be used only for the purposes for which they were created. The statutory uses established for per capita fees do not include intradepartmental loans or diversion of those fees to repay a debt or reduce the deficit of the Board of Horseracing.