



Montana Legislative Services Division
Legal Services Office

July 11, 2012

TO: Kris Wilkinson

FROM: Julie Johnson, Legal Services Office

RE: Legal Analysis Regarding Administrative Costs for the State Employee Group Benefit Plan

You have asked me to review § 2-18-812, MCA, and § 17-8-101, MCA, and determine which statute controls with regard to administrative costs of the State Employee Group Benefit Plan (SEGBP). I have framed the question as follows:

Question Presented

- 1. Whether § 2-18-812, MCA, requires that administrative costs related to the State Employee Group Benefit Plan be made from temporary appropriations, as described in 17-7-501, MCA.**

Short Answer

Yes, § 2-18-812, MCA, specifically provides that costs for the administration of SEGBP be made from temporary appropriations. While § 17-8-101(2), MCA, generally allows for funds to be disbursed if a subclass is established on the Statewide Accounting, Budgeting and Human Resource System (SABHRS), § 2-18-812, MCA, controls because it identifies a particular legislative intent with regard to administrative costs related to SEGBP.

Law

Pursuant to § 2-18-814, MCA, the Department of Administration "shall include the costs of administering and negotiating state employee group benefit plans established under this part. . . as part of the cost for state employee group benefits." Costs of administration of SEBPG are further discussed in § 2-18-812(4), MCA, which provides:

The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

Under Montana law, temporary appropriations can be made either by the Legislature as part of designated appropriation bills or sections designated as appropriations in other bills (§ 17-7-

501(1), MCA) or by valid budget amendment (§ 17-7-501(2), MCA).

Section 17-8-101(2), MCA, governs the appropriation and disbursement of money from the treasury. This subsection provides that:

. . . money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

- (a) by appropriation; or
- (b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

Analysis

It has been suggested that § 17-8-101(2)(b), MCA, allows for administrative costs for SEGBP to be paid out of the treasury as long as a subclass for administration costs has been established on SABHRS. The Health Care and Benefits Division (HCBBD) has created such a subclass.

While § 17-8-101(2)(b), MCA, may appear to authorize payment for the administrative costs of SEGBP to the HCBBD, this interpretation ignores the plain language of § 2-18-812(4), MCA, which specifically contemplates the funding of administrative costs for SEGBP.

First, general rules of statutory construction provide that when a general and particular provision are inconsistent, the particular provision is superior to the general, so that a particular legislative intent will control a general intent to the extent that there is any opposition between them. Section 1-2-102, MCA; State v. Placzkiewicz, 2001 MT 254, ¶ 18, 307 Mont. 189, ¶ 18, 36 P.3d 934, ¶ 18; State v. Dept. of Public Service Regulation, 181 Mont. 225, 592 P.2d 34 (1979). While the two statutes at hand, § 2-18-812, MCA, and § 17-8-101(2)(b), MCA, do not appear to be inconsistent, if they were, § 2-18-812, MCA, would control because it identifies a particular legislative intent with regard to the funding of administrative costs specifically for SEGBP. Section 17-8-101(2)(b), MCA, does not.

Furthermore, even when two statutes are consistent, as here, "[p]articulate expressions qualify those which are general." § 1-3-225, MCA; Powder River County v. State, 2002 MT 259, ¶ 63, 312 Mont. 198, ¶ 63, 60 P.3d 357, ¶ 63. Again, § 2-18-812, MCA, is a particular expression relative to the administrative costs of SEGBP, and as such it qualifies the more general terms of § 17-8-101(2)(b), MCA.

Finally, Montana law prefers "[a]n interpretation which gives effect" over "one which makes void." § 1-3-232, MCA. Therefore, the interpretation that § 17-8-101(2)(b), MCA, authorizes

payment for the administrative costs of SEBGP to the HCBD makes § 2-18-812(4), MCA, meaningless and void.

Conclusion

Based on the foregoing analysis of the facts, § 2-18-812(4), MCA, requires that administrative costs related to the SEBGP be made from temporary appropriations, either by the Legislature as part of designated appropriation bills, such as House Bill 2, by sections designated as appropriations in other bills, or by valid budget amendment. Section 17-8-101(2)(b), MCA, does not provide authority for the funding of administrative costs related to SEBPG regardless of whether a specific subclass has been established in SABHRS.

I hope this analysis adequately addresses your question. Please let me know if you have any followup inquiries.