



Joint Subcommittee On Postsecondary Education Policy and Budget

60th Montana Legislature

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December 18, 2007

Senator Bob Hawks
703 West Koch Street
Bozeman, MT 59715

Dear Senator Hawks,

Following the presentation of the Bitterroot Valley Community College (BVCC) proposal at the December 13, 2007, Postsecondary Education and Policy Budget Subcommittee meeting, some Subcommittee members had questions concerning whether the mandatory mill levy prescribed by section 20-15-313, MCA, is triggered by legislative approval or subject to voter approval following legislative approval. This letter is in response to your request for a legal opinion on whether the Board of County Commissioners in Ravalli County must seek voter approval prior to imposing the mandatory levy pursuant to section 20-15-313, MCA, and whether the ballot used on May 8, 2007, to approve the organization of the Bitterroot Valley Community College District may be subject to a legal challenge because it failed to include language informing voters that a vote "FOR organization" of the district automatically triggered the imposition of the mandatory levy without a vote of the electorate.

Mandatory Levy

Once a community college district is approved by the Legislature pursuant to section 20-15-209, MCA, the Board of Trustees of the community college is required to submit an operating budget to the Board of Regents financed by a state general fund appropriation, a mandatory mill levy amount, revenue derived from student tuition and fees, unrestricted income from other sources, and any optional mill levy approved by the electorate. Section 20-15-312, MCA, provides that the mandatory levy represents a specific percentage of the combined total of the fixed cost of education and the variable cost of education as defined and determined by the Legislature. This percentage must be specified for each community college by the Board of Trustees and approved by the Board of Regents. Once the specified percentage is determined pursuant to section 20-15-312, MCA, section 20-15-313, MCA, requires the Board of County Commissioners of any county where a community college is located to ***fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy*** prescribed by section 20-15-312(1)(b), MCA, and the voted levy prescribed by section 20-15-311(5), MCA, if one has been approved by the voters (emphasis added). Webster's Dictionary defines the term "mandatory" as obligatory, compulsory, or constituting a command. Therefore, if the Legislature subsequently approves the BVCC petition to establish a new community college district, section 20-15-313, MCA, obligates the Ravalli County Commissioners to levy a tax on real and personal property to finance the mandatory levy amount. The optional voted levy referred to in sections 20-15-311 through 20-15-313, MCA, occurs after the imposition of the mandatory mill levy. Therefore, the local election on May 8, 2007, combined with legislative approval of the proposed community college district triggers the requirement for the Ravalli County Commissioners to impose the mandatory levy without a vote of the local electors. In addition, an April 27, 2007, article in the Ravalli

Republic clearly stated that voters choosing to set up a community college district would be agreeing to support that local college through property taxes in accordance with the way the state's community college system is set up.

Ballot Language

Once a proposed community college district satisfies the requirements of section 20-15-201, MCA, the Board of Regents is required to order the elementary districts encompassing the proposed community college district to conduct an election on the proposition. Section 20-15-203, MCA, provides that the proposition submitted to the electorate be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of (elementary districts must be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of, Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the Board of Regents at Helena, Montana, on the day of, 20...?

FOR organization.

AGAINST organization.

There is no requirement under this section that the ballot include language reminding the electorate that a vote in favor of organizing the community college district combined with subsequent legislative approval of the district will automatically impose the mandatory mill levy prescribed under section 20-15-313, MCA. Section 20-15-313, MCA, which clearly obligates County Commissioners to impose the mandatory levy, is included as one of the laws authorizing community college districts in Montana that is referenced in the proposition language. Without a requirement that the ballot include language reminding voters that an affirmative vote has implications for the imposition of the mandatory levy prescribed under section 20-15-313, MCA, I see no grounds for successfully challenging the ballot for failing to include that language.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Eddy McClure
Staff Attorney
Montana Legislative Services Division

c Representative Bob Lake
 Representative Robin Hamilton
 Senator Rick Laible

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