

Role of State Agencies, Local Governments, and TIF District Boards in Interpreting Statutes and Role of the Courts in Settling Conflicting Interpretations

Tax Increment Financing Districts Study

Prepared for the Revenue and Transportation Interim Committee

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November 2015

This report for the study of tax increment financing districts (TIFDs) provides a brief overview of Montana Supreme Court cases that were issued after the parties were unable to resolve conflict using informal means. Additionally, it provides a summary of relevant Attorney General opinions. It does not report on successful resolutions that frequently occur on an informal basis, as these events are not reported.

As a general rule, the Department of Revenue (Department), local governments, TIFD boards, and consultants work closely together when interpreting statutes, and they all have a role in resolving differences of opinion on an informal basis. Litigation is not the normal course, and it occurs only after the parties are unable to settle their differences on an informal basis.

Montana Supreme Court Cases

Fallon County v. Department of Revenue

In *Fallon County v. Department of Revenue*, 2009 MT 454, 223 P.3d 886, the Montana Supreme Court settled a dispute between Fallon County and the Department relating to how much authority the Department has in the administration and supervision of tax increment financing laws.

In March 2008, the Department published proposed administrative rules pertaining to TIFDs, and the rules were adopted in July 2008. In August 2008, Fallon County filed a complaint in District Court¹ seeking a judgment declaring the administrative rules invalid. The county argued that the Department did not have "clear and specific authority" in Title 7 or Title 15 of the Montana Code Annotated to adopt the rules. Moreover, the county claimed that the administrative rules "violate[d] the division in the Montana Constitution between the power of local units of government and the state executive branch." The District Court held a hearing in March 2009 and ultimately determined that the Department did not have the statutory authority to adopt tax increment financing rules.

The Department appealed the ruling to the Montana Supreme Court. The issue on appeal pertained to whether the Department had the authority to adopt rules relating to tax increment financing laws. The county argued that nothing in Title 7, chapter 15, of the Montana Code Annotated granted rulemaking authority to the Department as it pertained to TIFDs. The county

¹ District Court of the Sixteenth Judicial District, In and For the County of Fallon, Cause No. DV-2008-028.

opined further that TIFD laws are not revenue laws. The Department countered that it has authority to adopt rules under section 15-1-201, MCA, which provides it with "general supervision over the administration of the assessment and tax laws of the state . . . and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation". Additionally, the Department opined that TIFD laws are by their nature "tax laws".

In December 2009, the Montana Supreme Court reversed the District Court and held that the Department had statutory authority to adopt TIFD-related rules. The Court agreed that the Department has broad authority over revenue generated through taxation. Additionally, the Court cited section 15-1-201, MCA, which provides in part that the "department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state".

In summary, the *Fallon County* case stands for the proposition that the Department has the authority to develop administrative rules relating to tax increment financing laws, including rules that confirm that a local government has created a qualified TIFD.

Fair Play Missoula, Inc. v. Missoula

In *Fair Play Missoula, Inc. v. Missoula*, 2002 MT 179, 52 P.3d 926, the Montana Supreme Court settled a dispute between residents of Missoula (Fair Play), the City of Missoula, and the developers of a baseball stadium (Play Ball) regarding multiple issues, including whether Missoula could contract with Play Ball for the development of a baseball stadium on city property that was located in an urban renewal area without following the urban renewal statutes.

In April 2000, Missoula accepted a gift of property upon which to construct a baseball facility and granted Play Ball the right to finance and construct the stadium on the property and to convey the completed facility to the city. Additionally, Missoula approved tax increment funding for capital improvements that were separate from but related to the baseball facility, including water and sewer connections, adjacent land for stadium parking, and construction of streets, traffic devices, and bicycle paths. Fair Play moved to enjoin the city from development of the proposed baseball stadium in District Court² based on an argument that the city was required to comply with urban renewal laws. In September 2000, the District Court dismissed all of Fair Play's claims on summary judgment, and Fair Play appealed to the Montana Supreme Court.

In August, 2002, the Montana Supreme Court determined that the decision whether to proceed with development under the urban renewal statutes was up to the city, and the fact that the city designated the capital improvements associated with the stadium construction as an urban renewal project did not require the stadium project to come under the same purview. Rather, the city was permitted to obtain an athletic field and civic stadium through purchase, donation, or condemnation and to regulate its use, but nothing in the statutes prohibited the city from

² District Court of the Fourth Judicial District, In and For the County of Missoula.

designating a stadium project as an urban renewal project or mandates that the project be designated as an urban renewal project.

Attorney General Opinions

Segregation of Mill Levy Revenue From Application as Incremental Taxable Value -- 43 A.G. Op. 13 (1989)

In May 1989, Attorney General Racicot responded to multiple questions that were raised by the Missoula City Attorney. One of the questions was whether a municipality is entitled to any taxes paid with respect to properties within an urban renewal area attributable to tax levies on behalf of a county water and sewer district. In analyzing the question, the Attorney General determined that if a tax increment provision exists in a municipality's urban renewal plan, the municipality will receive revenue for use in the urban renewal area attributable to application of a county water and sewer district's property tax levy upon the incremental taxable value.

Tax Increment Fund Grant to Private Nonprofit Corporation -- 42 A.G. Op. 89 (1988)

In June 1988, Attorney General Greely responded to a question raised by the Billings City Attorney. The question raised was whether a proposed grant of \$125,000 to the Yellowstone Art Center (a public fine arts museum) from the Billings City Council was a legal use of tax increment funds. The grant was to be used to pay for demolition and removal of a structure and for construction of a parking lot that would be open to the public and utilized for the museum.

The Attorney General analyzed section 7-15-4282, MCA, regarding urban renewal projects that qualify for tax increment financing. In doing so, he determined that the grant of tax increment funds to the museum was not prohibited because the grant would be used to pay for expenses that are included within the scope of section 7-15-4282, MCA. Additionally, the grant was essentially for a public purpose.

Use of Tax Increment Financing in Industrial Districts Limited to Development of Infrastructure Available for Secondary Value-Adding Industries -- 51 A.G. Op. 17 (2006)

In September 2006, Attorney General McGrath responded to questions raised by the Chief Deputy Yellowstone County Attorney. The first question pertained to whether property within a county but outside a municipality could be subject to an urban renewal plan, and the Attorney General concluded that it may not.

The second question pertained to the use of TIF in an industrial district for improvement at MetraPark. In determining that this would be an improper use, the Attorney General determined the purpose of tax increment financing is to develop infrastructure available for secondary, value-adding industries; in other words, industries that transform raw resources into processed substances. As such, financing for infrastructure improvements at MetraPark was not permitted.