



September 25, 2023

Mr. Jed C. Fitch
Beaverhead County Attorney
2 South Pacific St., Suite #2
Dillon, MT 59725

Re: Request for legal opinion – State’s carryforward authority under
Mont. Code Ann. § 15-10-420

Dear County Attorney Fitch:

You submitted a request for an Attorney General’s Opinion on August 18, 2023,
as to:

Whether the State of Montana has the authority to capture carry forward mills for future utilization as described in MCA § 15-10-420(1)(a)–(b), or if the restrictions noted in MCA § 15-10-420(5), (8) allow only an annual calculation up to the maximum allowable in MCA §§ 20-9-331, 20-9-333, 20-9-360, and 20-25-439 or the calculation performed with the formula described in MCA § 15-10-420(1), whichever is less?¹

Please be advised that we cannot provide an answer either through an Attorney General Opinion or as a letter of advice.

The Attorney General declines to issue written opinions when the matter “will likely result in litigation irrespective of a written opinion from the Attorney General’s Office.”² As you may know, Beaverhead County Commissioner McGinley reportedly

¹ Beaverhead County Attorney Jed C. Fitch, Letter to Attorney General Austin Knudsen re: Request for Opinion at 5, August 18, 2023.

² See Guidelines for Opinion Requests, Montana Department of Justice. Available online at <https://dojmt.gov/agooffice/attorney-generals-opinions/> (last accessed September 18, 2023); see also Jon Bennion, Attorney General’s Office: AG Opinions

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stated that if the Attorney General issues an opinion that fails to adopt your position, then the counties will consider litigation.³ During the September 18, 2023, Revenue Interim Committee meeting, Mr. Lance Melton testified that the Montana School Board Association will pursue litigation if the Attorney General adopts your position in an opinion.⁴ Given these public statements, this matter will likely result in litigation. As such, it is more appropriately determined through an adversarial judicial proceeding, not through an Attorney General Opinion.

This letter declining to answer the question presented should not be construed as taking a position on the merits—either in favor or opposition—of any arguments raised.

Sincerely,



BRENT MEAD

Deputy Solicitor General

at 7, January 8, 2019 (this policy predates Attorney General Knudsen). Available online at <https://leg.mt.gov/content/For-Legislators/orientation/law-school/AGOpinionPresentation.pdf> (last accessed September 20, 2023).

³ Keila Szpaller, Beaverhead County, other counties, allege steep tax increase by state illegal, Daily Montanan (September 16, 2023) <https://dailymontanan.com/2023/09/16/beaverhead-county-other-counties-allege-steep-tax-increases-by-state-illegal/>.

⁴ The video recording of the September 18, 2023, committee hearing may be viewed at: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230918/-1/49990#>