Chris Taggart

From: JAMES Wangerin <jim@wangerin.com>
Sent: Wednesday, December 6, 2023 8:40 PM
To: Ravalli County Commissioners Office
Subject: [EXTERNAL] PETITION

Follow Up Flag: Follow up
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As an interested person, any county commissioners could request the adoption of a new rule: "The Department of Revenue should NOT use banked mills for the upcoming year."

Montana legislation can be boiled down to 4 key requirements—what I refer to as "The 4-Legged Stool". This metaphor serves to illustrate that when one leg of a stool is broken, stability is lost, and the stool collapses. The four legs are as follows:

1. Constitutional right to participate and right to know
2. Executive Branch
3. Legislative branch
4. Judicial branch

I asked the legislators, the Governor, and will ask every county commissioner to petition for the adoption of a rule that allows me the right to participate and right to know afforded in a Montana Administrative Procedure Act hearing before the Department of Revenue decides to use banked mills to increase real estate taxes above the maximum calculated by the Department of Revenue.

MCA 2-4-102: Definitions
11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency.
14) "Substantive rules" are either:
(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or
(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

ARM 1.3.308 RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE
(1) Section 2-4-315, MCA, authorizes an interested person or member of the Legislature acting on behalf of an interested person when the Legislature is not in session, to petition an agency to adopt, amend, or repeal a rule.
(4) A decision to deny a petition or to initiate rulemaking proceedings must:
(a) be in writing;
(b) be based on record evidence, including any information submitted by petitioner, the agency, and interested persons; and
(c) include the reasons for the decision.

My petition was prior to Supreme Court opinion and MACo letter to governor after the opinion. My petition was denied because of Supreme Court Opinion. It did not consider the evidence contained in MACo letter to Governor. The record evidence includes any information submitted by the petitioner. Petitioner should submit the MACo letter as record

evidence. While the letter refers mostly to last year, the evidence is equally applicable to the next year. The record evidence includes the following:

1. Neither MACo, nor Department of Revenue, nor the Montana Supreme Court disagree that the CURRENT LEVY AUTHORITY last year was the maximum amount calculated by your Department of Revenue (77.9 mills).
2. MACo asks that the State of Montana live within its means and
3. levy ONLY the maximum amount calculated by Department of Revenue.
4. No school funding will be impacted,
5. taxpayers in all classes will save, and
6. Department of Revenue won't be intentionally taking advantage of increased appraised values by levying more than your current levy authority.
7. Using banked mills, according to the Montana Supreme Court, is allowable but not required.
8. MACo asks Department of Revenue to exercise discretion and demonstrate the greater fiscal responsibility you've asked county commissioners to demonstrate and levy the current year maximum mill levy calculation.

November 28, 2023
Governor Gianforte
Office of the Governor
PO Box 200801
Montana State Capitol
1301 E. 6th Avenue
Helena MT 59620-0801
Re: School Equalization Mills
Governor Gianforte:

The Montana Supreme Court clarified the State's ability to accrue 'banked mills' when the calculation required under MCA § 15-10-420 results in mills above the cumulative cap of 95. While that opinion was directly in contrast to the position of many counties, and the Montana Association of Counties in our defense of our membership, we recognize the Supreme Court's determination and appreciate the clarity.

As you know, 49 of 56 Montana counties levied the current State mill levy authority, calculated by the Department of Revenue at 77.9 mills for this tax year. Tax bills have been distributed across Montana, and the vast majority of property taxpayers are expecting the school equalization mills attached to their property to be at the maximum calculated for the current year: 77.9 mills. While we dispute the State's ability to levy "extra" mills as part of our position that you cannot have banked mills when you have never levied less than the full 95 authorized by statute, neither we, nor your Department of Revenue, nor the Montana Supreme Court disagree that the CURRENT LEVY AUTHORITY is 77.9 mills.

As such, we again ask that the State of Montana live within its means and levy ONLY the maximum amount calculated by your Department of Revenue. The State will receive an additional $20 million in revenue this year over last year if you exercise discretion and levy what the current calculations allow. No school funding will be impacted, taxpayers in all classes will save, and you won't be intentionally taking advantage of increased appraised values by levying more than your current levy authority. Using banked mills, according to the Montana Supreme Court, is allowable but not required. Please exercise discretion and demonstrate the greater fiscal responsibility you've asked county commissioners to demonstrate and levy the current year maximum mill levy calculation of 77.9 mills.

Respectfully,
Ross Butcher, MACo President
Fergus County Commissioner

James C Wangerin, CPA/PFS
413 Main Street
Deer Lodge MT 59722
(406) 846-1862

Disclosure: We inform you that any advice contained herein (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on

the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

From: Kathryn McEnery <kmcenery@powellcountymt.gov>
Sent: Wednesday, December 6, 2023 6:54 PM
To: JAMES Wangerin <jim@wangerin.com>
Subject: Re: petition request

Okay, thank you for explaining that you already contacted the DOR about a petition and it was denied, and is that why you are asking the Powell County Board of Commissioners to request a hearing?

I notice that the Rule you cite does not include a local government as one of the entities allowed to file a petition on behalf of an interested person.

K. McEnery

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