OP 23-0635

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 225

MONTANA ASSOCIATION OF COUNTIES,
MICHAEL MCGINLEY, and DAVID STROHMAIER,

Petitioners,

v.

STATE OF MONTANA, and MONTANA
DEPARTMENT OF REVENUE,

Respondents.

ORIGINAL PROCEEDING: Petition for Declaratory Judgment

COUNSEL OF RECORD:

For Petitioners:

Michael Green, Anne M. Lewis, Crowley Fleck, PLLP, Helena, Montana

For Respondent Montana Department of Revenue:

Matthew T. Cochenour, Cochenour Law Office, PLLC, Helena, Montana

For Respondent State of Montana:

Austin Knudsen, Montana Attorney General, Michael D. Russell, Alwyn Lansing, Assistant Attorneys General, Helena, Montana

Emily Jones, Jones Law Firm, PLLC, Billings, Montana

Decided: November 22, 2023

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion and Order of the Court.

¶1 On October 26, 2023, Petitioners filed a Petition for Original Jurisdiction and Declaratory Judgment, pursuant to M. R. App. P. 14(4), requesting that we declare the Department of Revenue's (DOR) method for calculating statewide property tax mills unlawful. On November 6, 2023, per our request, DOR filed a response.[1] Petitioners assert the matter is urgent because it concerns the total mills counties are required to levy, and a decision is needed in time to permit an orderly administration, if required, before the second half property tax payment is due at the end of May 2024. DOR agrees the matter can be resolved quickly and does not oppose an original proceeding before this Court.

INTRODUCTION

¶2 Petitioners, Michael McGinley, David Strohmaier, and the Montana Association of Counties (MACo) allege DOR misconstrued statutes prescribing the methodology for calculating statewide mills, which the counties are obligated to administer. MACo contends local jurisdictions have exclusive authority to levy statewide school-equalization mills, and the State may not require them to do so. Specifically, MACo argues that DOR lacks authority to require taxing entities to "bank" mills exceeding the amount counties were statutorily authorized to levy in one year, and then to use the banked mills to mandate that counties must levy up to the statutory maximum in later years. DOR, for its part, contends counties must levy school-equalization mills pursuant to the State's mandate to

[1] The Attorney General deferred to DOR in its response.

provide public K-12 education with equalized funding under Article X, Sections (1)(1) and (3), of the Montana Constitution.

¶3 This dispute arose from the recent dramatic increase in property values across Montana. For the current tax year, statewide property evaluations have "increased by 39% for all classes of property and 48.5% for residential properties." DOR has responded to the rise in property values by increasing statewide mills, which is expected to amount to an increase of roughly $80 million in tax revenue. MACo contends statewide mills should be decreased to offset the impact of increased property values on taxpayers.

¶4 We grant Petitioners' request and agree to exercise original jurisdiction pursuant to M. R. App. P. 14(4). We hold that Montana counties must levy taxes according to DOR's methodology for calculating statewide mills. MACo's reading of the statute is irreconcilable with the Montana Constitution and clear intent of the Legislature, and we defer to DOR's longstanding understanding that it shares authority with local jurisdictions to "bank" mills pursuant to § 15-10-420(1)(b), MCA.

DISCUSSION

¶5 At the outset, it is essential to address the respective roles the delegates to the 1972 Constitutional Convention imagined state and local governments would each play in administering property taxes. The delegates understood "[t]he details of any tax administration system should be left to the legislature, which is best qualified to develop the most efficient, modern and fair system . . . [and] should be . . . administered by the executive branch of government . . . ." Montana Constitutional Convention, Committee Proposals, February 18, 1972, Vol. II, p. 589 [hereinafter Committee Proposals]. By

vesting "appraisal, assessment, and equalization" authority in the State executive branch, the Legislature could address "inequalities that [existed] within taxing districts and between taxing districts," as well as the "pressures and temptations for undervaluation and under-assessment . . . at the local level . . . ." Committee Proposals at 589.

¶6 DOR's argument comports with the delegates' understanding of the State's inherent taxation power, and with their intent that State agencies would wield its power pursuant to the Legislature's directives. The delegates had the foresight to envision an occasion, like here, when local jurisdictions would become frustrated by the State's taxation authority. The Legislature thus furnished local governments with commensurate authority as a solution. Counties have authority to levy mills according to local interests. They also have authority to bank certain mills and levy them later. In the case of statewide mills, however, that authority rests with the State alone. A reading of the statute together with the Montana Constitution better elucidates that division of authority.

¶7 Article X, Section 1(1), of the Montana Constitution guarantees "[e]quality of educational opportunity" to Montana residents. The Legislature thus enacted statewide mill levies to ensure an equal distribution of funding to public schools. Each county is required to levy 33 mills for elementary equalization, 22 mills for high school equalization, and 40 mills for equalization aid. Sections 20-9-331, -333, -360, MCA (collectively, "school-equalization mills").[2]

[2] Subject to § 15-10-420, MCA, Cascade, Lewis and Clark, Missoula, Butte-Silver Bow, and Yellowstone Counties are required to levy an additional 1.5 mills for vocational technical education. Section 20-25-439, MCA.

¶8 Governmental entities that are authorized to impose taxes are "subject to" § 15-10-420, MCA, which prescribes a cap for the total number of mills a county may levy, as well as the methodology for calculating mills generally. In relevant part, § 15-10-420, MCA, provides:

> (1)(a)[t]he maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.
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> (b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.
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> . . .
>
> (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of [] 20-9-331, 20-9-333, 20-9-360, and 20-25-439.

DOR's illustration of the statute's interplay is instructive:

> Assume that in Year 1, the Department performs the (1)(a) calculation and establishes the authority to impose a maximum of 103 mills. Because school-equalization mills are subject to the subsection (8) cap, governmental entities cannot levy this number of mills. So, rather than imposing the maximum authorized under subsection (1)(a), the Department calculates the number of mills to be imposed to be 95 mills. Under this scenario, subsection (1)(b) then provides that the unused mills would be banked, and the authority to impose them would carry forward.
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> Then, assume that in Year 2, the Department performs the calculation which results in authority to impose a maximum of 90 mills under subsection (1)(a). Because this is fewer than the maximum number allowed under subsection (8), the Department follows subsection (1)(b) to use 5 of the banked mills, so

> that the full number of school-equalization mills can be levied. After the 5 banked mills are used, there remain 3 unused banked mills that can be carried forward to another year, if necessary.

¶9 The issue raised by MACo here is whether DOR constitutes a "governmental entity" under the meaning of § 15-10-420(1)(a) and (b), MCA, such that it has the authority to perform the banking—or carry-over—function, described above, in its statewide mill calculations. MACo contends the authority to perform the carry-over function rests with local jurisdictions alone. Otherwise, MACo argues, the Legislature would have supplied the word "department," rather than "governmental entity" under § 15-10-420(1)(a) and (b), MCA, like it did for § 15-10-420(8), MCA. DOR, on the other hand, argues it clearly is a "governmental entity," and it is required to calculate statewide mills pursuant to the State's constitutional mandate to equalize school funding.

¶10 In matters of statutory interpretation, we seek to "ascertain and declare what is in terms or in substance contained therein," and we will not "insert what has been omitted" or "omit what has been inserted." Section 1-2-101, MCA; *see, e.g., Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 20, 384 Mont. 503, 380 P.3d 771. We strive to implement legislative objectives in accordance with the statute's plain language. *Wangerin v. State*, 2022 MT 236, ¶ 17, 411 Mont. 1, 521 P.3d 36. When construing multiple statutory provisions, we harmonize them to give effect to them all. *Wangerin*, ¶ 17. Further, the state agency charged with administering a statute is entitled to deference and respect in its interpretation. *Mont. Trout Unlimited v. Mont. Dep't of Natural Res. & Conservation*, 2006 MT 72, ¶ 37, 331 Mont. 483, 133 P.3d 224.

¶11 DOR is a governmental entity under the meaning of § 15-10-420(1), MCA. *See* § 2-15-1301, MCA. DOR would not be able to effectuate its constitutional and statutory mandates to equalize funding in public education were it not. Indeed, MACo concedes "it is beyond dispute that the Department is required to determine the mills to be levied for the Statewide and Vo-Tech Mills by applying the formula in subsection (1)(a)." As DOR correctly explains, the statute would be inconsistent if the term "governmental entity" applied to DOR such that it could make mill calculations under § 15-10-420(1)(a), MCA (mill cap), but then *did not* apply to DOR under § 15-10-420(1)(b), MCA (mill banking).

¶12 If we interpreted § 15-10-420(1)(a) and (b), MCA, to mean DOR is prohibited from calculating statewide mills altogether, which is the logical conclusion of MACo's argument, it would be impossible to harmonize the statutes governing statewide mills with the State's constitutional mandate to provide equalized funding for public education. As MACo concedes, DOR has a mandate, under § 15-10-420(8), MCA, to calculate school-equalization mills. DOR is also required to calculate statewide mills for the university system. Section 15-10-109, MCA. The Legislature promulgated these statutes pursuant to the State's obligation to provide equal educational opportunity to Montanans. Mont. Const. art. X, § 1(1), (3).

¶13 If the Legislature intended to confine authority under § 15-10-420, MCA, to local governments, it would have supplied the term "local governments." Instead, the Legislature used "governmental entity," in order to accommodate the respective functions of the State and local governments to administer Montana property taxes. We refuse to

"insert what has been omitted or [] omit what has been inserted" to effectuate MACo's interpretation of the statute here. *Clark Fork Coal.*, ¶ 20. DOR's authority to determine and equalize taxes was a clear objective of delegates to the 1972 Constitutional Convention and the Legislature. The provisions of § 15-10-420, MCA, together with § 15-10-109, MCA, and the Montana Constitution are irreconcilable unless interpreted that way.

¶14 Finally, on questions of statutory interpretation, we generally defer to a state agency when its interpretation has "stood unchallenged for a considerable length of time . . . ." *Mont. Trout Unlimited*, ¶ 37. According to DOR, it banked mills each year between 2001 and 2017, then again in 2019 and 2021, when its calculation yielded a number of mills that exceeded the statutory cap. DOR used those banked mills to reach the statutory cap in 2018, 2020, and 2022. DOR again used this methodology for the current tax year. DOR has clearly understood § 15-10-420(1)(b), MCA, to provide it authority to bank mills since the provision was enacted in 2001. 2001 Mont. Laws ch. 361. DOR's methodology has been untested for two decades, and its interpretation of the statute is consistent with the State's constitutional directives.

¶15 We therefore hold that DOR may continue to determine statewide mills by carrying forward any mills exceeding the cap in one year, and then require counties to apply those mills to reach the cap in subsequent years. DOR's interpretation of its taxation authority is consistent with the Montana Constitution and the Legislature's directive to equalize funds for public education across Montana.

¶16 IT IS THEREFORE ORDERED that the petition for original jurisdiction is ACCEPTED and GRANTED as an original proceeding in the form of a declaratory judgment action under M. R. App. P. 14(4).

¶17 IT IS FURTHER ORDERED that the counties shall levy statewide mills pursuant to DOR's calculations for the current and future tax years.

The Clerk is directed to provide a copy of this Opinion and Order to all counsel of record.

DATED this 22nd day of November, 2023.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE