March 24, 2016

TO: Education and Local Government Committee
FROM: Mike Harris, Gallatin County
RE: Asset Disposal of County Property

The following information is intended to be information aimed at bringing to the attention of the Legislature an issue that is becoming increasingly difficult and costly for local governments to address in relation to the disposal of assets by County Governments.

Montana Code has three major areas that need to be addressed in order to clarify existing requirements and simplify the process for disposing of county assets.

1. The first is primarily related to the sale of types of county land.

There are three main areas of law that cover county actions in regard to property disposal.

Title 7, Chapter 8, Part 22. Acquisition, Transfer, and Management of County Property

Part 22 covers the sale of "real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business" (7-8-2201(1)). This section of code is typically used to dispose of equipment, vehicles, buildings, rolling stock, materials, office equipment, etc. What the law does not cover is the "disposal" of property.

If the property is "reasonably" of value in excess of $2500 then the sale,

- must be at public auction at a location determined by the county commission (7-8-2212)
- must be appraised prior to being sold and the appraisal is only good for 3 months (7-8-2214)
- must be sold for no less than 90% of the appraised value (7-8-2213)
- any taxpayer can challenge the appraised value prior to the date of the sale forcing a District Judge to have the property reappraised by appointing three disinterested persons and the sale has to be done over again.
- If the property doesn't sell at the 90% value then anytime after the auction the property can be sold for 70% (7-8-2218)

Part 23 covers the sale of tax deed land. These are properties that the county treasurer has taken a tax deed on for continuous failure to pay taxes. The property taken by tax deed must:

- Within six months of acquiring title be sold at public auction, donated to a municipality, donate or sell the land to a nonprofit corp. for housing projects, or retain the land for county use. (7-8-2301)

- The first sale of the tax deed land does not require an appraisal but at a minimum must be sold for the amount of taxes due, penalties, interest, cost of taking the tax deed and cost of conducting the sale.(7-8-2301 (2))

- The taxpayer may repurchase the property at anytime up to 24 hours prior to the first offering for sale for the total amount owed in taxes, penalties and costs. (7-8-2303)

- After the repurchase period the county may sell the land for the price set in the first sale, donate the land to a municipality, donate or sell the land at a reduced price to a corporation for the purpose of constructing low-income housing, or retain the land for county use subject to 7-8-2501.

- If no bids are received at the first sale of the tax deed lands the county must hold a second auction within 6 months. If no bids are received for the sale price at the second auction the county can sell the property at anytime to anyone for not less than the sale price fixed for the first auction, or may sell the property using the process described in 7-8-2218, which is 70% of appraised value.

Part 23 also addressed property not acquired by tax deed with a value less than $50. County property worth less than $50 and property acquired by means other than by tax deed "may" be sold by using Part 22. The key here is "may" rather than "shall" or "must". (7-8-2308)

Part 25 is a method of alternative classification and management of county lands acquired by any means including Part 22, Part 23 and lands dedicated through the subdivision and platting process. To use Part 25 the county would classify county lands under Part 25 and identify them for "retention or disposal". Only lands designated for disposal because they are not required for the conduct of county business may be sold under Part 25.

Selling land under Part 25 requires (7-8-2511):

- Making an order for public auction of any lands classified for sale
- Sale must be conducted "at the front door of the county courthouse"
- Lands must be appraised regardless of their value
- May not be sold for less than the appraised value
- Allows permitee or licensee to purchase the lands for the value of the highest bidder at public auction.

Part 25 also contains a unique provision allowing the county discretion on what provisions of Part 25 they want to use.

> **"7-8-2502(2) the board may <u>in its discretion</u> elect to exercise <u>any</u> of the powers and authority granted to it by this part, and <u>to the extent that the board elects</u>, the provisions of this part are controlling and <u>supersede all conflicting</u> provisions of other laws"**

The problem with these three parts of law are that they are interconnected to each other but do not give clear guidance on what process has to be followed.

a. Part 22 addresses all property including land

b. Part 23 is specific to Tax Deed land except it then addresses all property valued less than $50 which ties back to Part 22.

c. Part 25 addresses only county land but then allows the county to pick and choose what provisions of Part 23 and Part 22 they want to use.

d. None of the three parts uses a consistent appraisal or valuation method

e. None of the three parts uses a consistent minimum sale price

f. None of the three parts uses a consistent method for sale after an auction

g. None of the three parts uses a consistent location for holding the sale or auction

h. None of the three parts addresses the ability to use "online auctions" which has been shown to make the sale of property easier and garner a higher sale price of the county property.

i. None of the three parts defines who can conduct the auction. Does it have to be a licensed auctioneer or can the county sheriff or county staff conducts the auction?

j. None of the three parts have the same provisions for how to lease lands that the county has acquired.

k. Nothing in the law addresses zoning designations of land being sold by the county. Often county lands in a zoning district are classified as PLI (public lands and institutions). Once they are sold to a private individual the PLI zoning designation no longer meets the land use and the county who sold the land will be the entity who has to rezone the property.

2. The second major issue we face is the sale of property that is not land.

Part 22 and Part 23 both address the sale of property valued at less than $2500. Part 23 refers to all property valued at less than $50 may be sold using the provisions of Part 22. It doesn't however say the county shall or must but it doesn't give another method of selling property valued less than $50. It doesn't make sense why it is there.

An important point is that Part 22 and Part 23 do not specify the "disposal" of property, only the sale or exchange. The only Part that uses the term "dispose" is Part 25 and it only deals with land.

The reason that the lack of authority to "dispose" of property is important is that even items that are broken, unusable, or unsafe for use are being run through the sale process rather than just being recycled. Property valued less than $50 could be construed to be disposable pens, aluminum cans, plastic and glass containers, 3 ring binders or other minor tools and equipment. This also includes computers and computer components which may have information on them that shouldn't be distributed to the public.

The cost of processing, storing, advertising, and selling minor items such as these is typically greater than any revenue gained from the sale. The laws were written in a time where tools and equipment were not as cheap or disposable as they are today.

3. The third major issue we have regarding this process are that it is vague in the language of what "reasonably" of value determines the $2500 threshold.

The law uses a process to sell property designed for real-estate and counties are trying to apply it broadly to all property. Real-estate appraisals are common but finding appraisals for equipment, vehicles, furniture, and supplies is time consuming, difficult and expensive.

> **For example, Gallatin County recently disposed of a 1970's International Dump Truck. Our method of reasonably determined that the value was based on its weight for scrap metal. That value came in below $2500. Our reasoning for using scrap value was the vehicle was not safe for operation, was not road worthy and we did not want it to be sold as an actual vehicle that may be used on a public highway.**
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> **Trying to find an appraiser to value a 40 year old dump truck would have been difficult. Comparable searches online one may find the same dump truck that had been restored and valued at higher than $2500. It is also arguable whether or not a taxpayer would be able to challenge the valuation of property if the county said it was less than $2500.**

Vehicles and equipment that is believed to be potentially greater than $2500 the county needs to find someone to appraise the equipment. The equipment may be located in multiple locations requiring either multiple sales or the cost of transporting them to a central location. This requires storing vehicles and equipment for longer periods of time in order to hold the least number of sales possible and to have all the appraisals be at the same time since they are only good for 3 months.

It is important to note that equipment that is valued over $2500 the appraisal can be challenged by any tax payer. For instance if we are selling an old tractor that we had valued at $3500 any tax payer under 7-8-2215 the day before the sale could challenge that valuation causing us to start the process over through the judge appointed valuation process.

The property sale process does not take into account the size of some county operations and the costs of advertising, processing, accounting and storage of these items. In the case of vehicles it also does not take into account that a car like a Crown Victoria Sheriff vehicle we sell for $350 we may likely be picking up as a junk vehicle on the side of the road somewhere in the future.

I have attached several examples from Jennifer Blossom our Gallatin County Auditor explaining the costs and what revenue was received from our most recent round of selling off property.

4. In summary we believe that the laws governing the county sale and disposal of assets should be rewritten.

a. Trying to use the three parts of law which intertwine is cumbersome, confusing and costly to the counties as well as the tax payers.

b. There should be clear definitions that counties can follow

c. They should be consistent with what other state and municipal agencies use to purchase, sell and dispose of assets.

d. Disposal and/or recycling should be specifically written into the code as an alternative to selling.

e. The $2500 threshold should be raised at least on property that is not real-estate.

f. The process for the purchase, sale, appraisal, minimum sale price, sale process and location of the sale should be unified.

g. Property below the threshold of a required appraisal should be subject to the basic public notice requirements such as a county commission meeting rather than the costly proof of publication process required by 7-1-2121.

h. Flexibility should be given for a county to develop the sale and disposal process that best fits the needs of the county and minimizes expense to the taxpayers similar to how municipalities do.