

VOLUME NO. 37

OPINION NO. 42

CITIES AND TOWNS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction; CITY COURTS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction; COURTS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction; CRIMINAL LAW - Jurisdiction of city courts over certain misdemeanors; JUSTICE COURTS - Concurrent jurisdiction with city courts over certain misdemeanors; ORDINANCES AND RESOLUTIONS - Necessity of ordinance or resolution to implement city court misdemeanor jurisdiction; WORDS AND PHRASES - "Concurrent jurisdiction"; REVISED CODES OF MONTANA, 1947 - Sections 11-1602, 93-410 and 95-1503.

- HELD: 1. Statutory jurisdiction granted city courts by section 11-1602, R.C.M. 1947, is self-executing and a city or town does not need to take any affirmative action by resolution or ordinance to effect such jurisdiction.
2. Misdemeanor prosecutions which are within the concurrent jurisdictions of both a city court and a justice court may at the election of the prosecuting officer be brought in either court. Prosecution of such offenses in either court must be instituted in the name of the state.
3. State criminal statutes may be enforced within cities and towns and such enforcement does not depend upon adoption of the statutes through ordinances or resolutions.

1 July 1977

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Dear Mr. Meisburger:

You have requested my opinion concerning the jurisdiction of city courts over misdemeanor offenses against the state. You have asked the following questions:

1. Is the city obligated to take any affirmative action by resolution or ordinance in order to accept the concurrent jurisdiction conferred upon city courts by section 11-1602, R.C.M. 1947?
2. Is it mandatory under sub-paragraph (2) of section 11-1602, that any action brought for a violation of a state law within the city be filed in the city court in the name of the State of Montana as plaintiff? May such action also be filed in justice court? Is this an elective matter with the officer involved to bring the action in whichever court he may choose?
3. In order to enforce a state law in a city court, absent any city ordinance on the subject matter, is it necessary that the city adopt the state law word for word by an ordinance?

City courts, formerly called police courts, are established by chapter 16 of Title 11, R.C.M. 1947, specifically section 11-1601. Their jurisdiction is set forth in sections 11-1602 and 11-1603, R.C.M. 1947. Section 11-1602, granting jurisdiction over certain misdemeanors, provides:

Jurisdiction of city courts. The city court has concurrent jurisdiction with the justices' court of all misdemeanors punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment under the following conditions:

(1) Any action charging the commission of an offense within the city or town limits in violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) Any other action brought for violation of a state law within the city shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

(3) Application for search warrants and complaints charging the commission of a felony may be filed in the city or town court and when they are so filed the city judge shall have the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court. (Emphasis added.)

Your first question requires a determination of whether the jurisdiction vested in city courts is self-executing.

Where the legislature has granted cities and towns discretionary powers, it has customarily employed such words as "the city or town council has power," or "may." See generally chapters 9 and 10 of Title 11, R.C.M. 1947. In contrast, the language used in chapter 16 of Title 11 is mandatory, see State ex rel. McCabe v. District Court, 106 Mont. 272, 76 P.2d 634 (1938); and not discretionary, see State ex rel. Browman v. Wood, 543 P.2d 184, 187 (Mont. 1975). "A city court is established in each city or town * * *," section 11-1601, R.C.M. 1947; and each city court so established "has concurrent jurisdiction with the justices' court of all misdemeanors * * *," section 11-1602, R.C.M. 1947. (Emphasis added.) In establishing city courts, the legislature has exercised the authority granted it by Article VII, section 1 of the 1972 Constitution of Montana, which vests the judicial power of the state in "one supreme court, district courts, justice courts, and such other courts as may be provided by law." (Emphasis added.) The provisions of chapter 16 of Title 11, are "statutes which clearly show that the state Legislature deems the subject matter of the legislation to be a matter of general state-wide concern rather than a purely local municipal problem, (and) the city is then without the essential authority or power to pass or adopt any ordinance dealing with that subject matter." State ex rel. City of Libby v. Haswell, 147 Mont. 492, 494-495, 414 P.2d 652 (1966). Therefore, city courts have such jurisdiction as conferred by sections

11-1602 and 11-1603, R.C.M. 1947, see State ex rel. Marquette v. Police Court, 86 Mont. 297, 308, 203 P. 430 (1929); and cities and towns have no authority to add or detract from that statutory jurisdiction. An ordinance which merely adopts and implements jurisdiction which is expressly granted to city courts by statute is redundant and unnecessary.

Your second question is answered by Cashman v. Vickers, 69 Mont. 516, 525-526, 223 P. 897 (1924), which defines "concurrent jurisdiction." Section 11-1602 grants city courts "concurrent jurisdiction with the justices' court of all misdemeanors punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment not exceeding six (6) months, or by both * * *." Justice court jurisdiction over the same class of offenses is provided in section 93-410, R.C.M. 1947. In Cashman the Montana Supreme Court held that the term "concurrent jurisdiction," as used in a statute giving justice courts "concurrent jurisdiction" with district courts over cases of forcible entry and unlawful detainer, means "equal jurisdiction" and "that different tribunals are authorized to deal equally with the same subject matter at the choice of the suitor." 69 Mont. at 526. Misdemeanor prosecutions of the type described in sections 11-1602 and 93-410 may therefore be brought in either city court or justice court at the election of the prosecuting officer. Subsection (2) of section 11-1602 requires that prosecution brought in city courts for violations of state law must be commenced in the name of the state. Section 95-1503, R.C.M. 1947, a statute of general applicability which specifies the form of criminal charges, makes clear that prosecutions for violations of state law which are brought in justice court must similarly be brought in the name of the state. Misdemeanors, by definition, are violations of state law--the term does not encompass violations of local ordinances. See section 94-2-101(37), R.C.M. 1947, and Streight v. Justice Court, 45 Mont. 375, 381, 123 P. 405 (1912).

Your third question is answered by the reasoning of my answer to your first question. State misdemeanor statutes are of general statewide effect and are not dependent upon local implementing acts. See State ex rel. City of Libby v. Haswell, supra.

THEREFORE, IT IS MY OPINION:

1. Statutory jurisdiction granted city courts by section 11-1602, R.C.M. 1947, is self-executing and a city or town does not need to take any affirmative action by resolution or ordinance to effect such jurisdiction.
2. Misdemeanor prosecutions which are within the concurrent jurisdictions of both a city court and a justice court may at the election of the prosecuting officer be brought in either court. Prosecution of such offenses in either court must be instituted in the name of the state.
3. State criminal statutes may be enforced within cities and towns and such enforcement does not depend upon adoption of the statutes through ordinances or resolutions.

Very truly yours,

MIKE GREELY
Attorney General