

VOLUME NO. 37

OPINION NO. 5

CITIES AND TOWNS - Authority to regulate parking on private lots; REVISED CODES OF MONTANA, 1947 - Sections 32-2114, 32-2124.2 and 32-2130.

HELD: The Uniform Act Regulating Traffic on Highways as adopted by the State of Montana precludes municipal corporation from enacting an ordinance to regulate parking upon privately owned lots

5 August 1977

Robert L. Jovick, Esq.
Acting City Attorney
City of Livingston
Livingston, Montana 59047

Dear Mr. Jovick:

You have requested my opinion regarding the following question:

May a municipal corporation, under Montana law, enact an ordinance to regulate parking upon privately owned lots and issue parking citations to the registered owner of vehicles improperly parked on such lots?

There are no Montana statutes which grant local governmental units authority to regulate parking on private property. Prior to the enactment of the 1972 Constitution, it was well settled that municipalities had only those powers specifically granted them by state law. Leischner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). However, Article XI, section 6, of the Montana Constitution now provides otherwise, at least as to local units that might adopt self-government charters. The convention notes that that section indicate that local governmental units, with self-government charters, have all powers not specifically denied. The section does make it clear however, that the State has the power to specifically deny certain powers. See also section 47A-7-105 and 47A-7-203, R.C.M. 1947.

In that regard, Montana has adopted the Uniform Act Regulating Traffic on Highways. Section 32-2130, R.C.M. 1947 precludes municipalities from enacting ordinances in conflict with that act. The section provides:

...No local authorities shall enact or enforce any ordinance, rule, or regulation in conflict with provisions of this act unless expressly authorized herein.

Further, by its terms the act specifically precludes regulation of motor vehicles on private property. Section 32-2124.2, R.C.M. 1947, provides in pertinent part:

The authority to regulate motor vehicles...shall only be exercised as to vehicles operated on the public roads and highways of this state.

The definition of public roads and highways contained in section 32-2114, R.C.M. 1947, does not include privately owned parking lots. In addition, section 32-21-102, R.C.M. 1947, which grants local government certain authority regarding parking, does not provide for the exercise of authority over private lots.

THEREFORE, IT IS MY OPINION:

The Uniform Act Regulating Traffic on Highways as adopted by the State of Montana precludes a municipal corporation from enacting an ordinance to regulate parking upon privately owned lots.

Very truly yours,

MIKE GREELY
Attorney General