

VOLUME NO. 37

OPINION NO. 66

BUILDING CODES - Authority of counties to adopt building codes; LOCAL GOVERNMENT - Authority to adopt selective portions of the state building code; REVISED CODES OF MONTANA, 1947 - Section 69-2112.

- HELD: 1. Counties in Montana have the authority to establish a building code program.
2. Local government entities may adopt selected portions of the state building code leaving the remaining portions of the code to be enforced by the Department of Administration.

16 September 1977

Jack C. Crosser, Director  
Department of Administration  
Sam W. Mitchell Building  
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion regarding the following questions:

1. Do counties in Montana have the authority to establish a building code program?
2. May local government entities adopt only selected portions of the state building code leaving the remaining portions of the code to be enforced by the Department of Administration?

Recently, chapter 504, Laws 1977, was enacted amending section 69-2112, R.C.M. 1947. The chapter allows counties to implement and enforce a building code program as long as the program is consistent with the state codes. That section now provides:

Municipal Building Codes - Applicability of State Code

- (1) The local legislative body of a municipality or county may adopt a municipal building code by

ordinance to apply to the municipal or county jurisdictional area. A municipal or county building code may include only codes adopted by the department.

(2) If a municipality or county does not adopt a building code as provided in subsection (1) of this section, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(3) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(4) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (3).

The statute, on its face, clearly authorizes counties to adopt building codes. It is a well-established rule of statutory construction that where the language of a statute is plain, unambiguous, direct and certain, the language speaks for itself. Montana Association of Underwriters v. State of Montana, 34 St. Rep. 297, 563 P.2d 577, (1977).

With respect to your second question, it is my opinion that the 1977 amendments to section 69-2112 specifically allow local government entities to adopt selected portions of the state building code leaving to the state jurisdiction over the remaining codes. Prior to the adoption of the 1977 amendments, the last sentence of section 69-2112(1) read:

A municipal building code must cover all general areas included in the state building code.

This language was mandatory in nature and precluded the adoption of only selected portions of the state code. The above-quoted sentence was amended by chapter 504, Laws 1977, to read as follows:

A municipal or county building code may include only codes adopted by the department.

While the apparent intention of this particular amendment is to preclude the adoption of codes not utilized by the Department of Administration, it also strikes the mandatory "must" and replaces it with a permissive "may" concerning the adoption of building codes. In addition the specific requirement that the local codes must cover "all general areas" covered by the state building codes has been deleted, thereby opening the door for selective adoption. In the construction of an amendatory act it is presumed that the Legislature intended to make a change in the existing law. Pilgeram v. Hass, 118 Mont. 431, 167 P.2d 339; Montana Department of Revenue v. American Smelting and Refining Co., 34 St. Rep. 597 (1977).

Allowing selective adoption is consistent with the recent expansion of local government powers pursuant to Article XI, of the Montana Constitution. And, although building codes are in an area that has clearly been subjected by law to state regulation and control, as defined by section 47A-7-203, these powers have been specifically delegated to local governments by the above quoted provisions. Of course, under the statute, the state code and enforcement procedures will apply in areas not encompassed by local code.

THEREFORE, IT IS MY OPINION:

1. Counties in Montana have the authority to establish a building code program.
2. Local government entities may adopt selected portions of the state building codes leaving the remaining portions of the code to be enforced by the Department of Administration.

Very truly yours,

MIKE GREELY  
Attorney General