

VOLUME NO. 38

OPINION NO. 7

COUNTIES - Use of revenue sharing funds and local tax revenues; museums, historical societies and community theaters; contracts with private organizations;
LOCAL GOVERNMENT - Self government powers; revenue sharing funds and local tax revenues; museums, historical societies and community theaters; contracts with private organizations;
MONTANA CODE ANNOTATED - Sections 7-1-102, 7-1-106, 7-7-2103, 7-8-2102, 7-8-2203, 7-16-2201, et seq.;
REVISED CODES OF MONTANA 1949 - Sections 16-805, 16-1008A, 16-1163 to 1165, 47A-7-102, 47A-7-106;
MONTANA CONSTITUTION (1977) - Article V, section 11(5), Article XI, section 6;
ATTORNEY GENERAL OPINIONS - 37 Op. Att'y Gen. No. 25 (1977), 37 Op. Att'y Gen. No. 78 (1977), 37 Op. Att'y Gen. No. 105 (1978).

HELD: A local government with self-government powers may provide the services or functions of a museum, historical society or community theater. These services or functions may be provided by a contract with a private organization if such a contract is a reasonable and appropriate method for so doing.

30 January 1979

Ken Korte, Director
Montana Historical Society
225 North Roberts
Helena, Montana 59601

Dear Mr. Korte:

You have requested my opinion on the following question:

May a local government with self-governing powers use federal revenue sharing funds or local tax revenues or both to fund a museum and art center, a historical society or a community theater?

It is by now well established that a local government with self-government powers has all powers which are not denied by the Montana Constitution, by state law, or by the local charter. 37 Op. Att'y Gen. No. 68. Article XI, section 6, Montana Constitution (1977) and section 7-1-102, MCA (for-

merly section 47A-7-102, R.C.M. 1947), specifically provide that a local government with self-governing powers may exercise any power or perform any service or function not prohibited by the Constitution, law or charter. Local self-government powers must be liberally construed and every reasonable doubt must be resolved in favor of the local government power. Section 7-1-106, MCA (formerly section 47A-7-106, R.C.M. 1947).

While a local government unit, even with self-government powers, may not make an appropriation to a private organization not under government control (Article V, sec. 11(5), Montana Constitution; section 7-7-2103, MCA (formerly section 16-805, R.C.M. 1947), 37 Op. Att'y Gen. No. 25 (1977), the local government may nonetheless contract with private organizations to perform functions or services which the local government is authorized to provide for its constituents. 37 Op. Att'y Gen. No. 105 (1978). The inquiry is, first, whether the local government has the power to provide the service or function and, second, whether a contract with a private organization is a reasonable and appropriate means of providing that service or function.

First, counties, and therefore local city-county governments with self-government powers, have express authority to establish and maintain museums. §§ 7-8-2102 and 7-8-2203 (formerly § 16-1008A), and 7-16-2201 et seq. (formerly §§ 16-1163 to 1165). While no comparable express authorization has been found relating to a historical society or a community theater, a local government with self-government powers may "provide any services or perform any functions not expressly prohibited" by the Constitution, law, or charter. There are no express prohibitions in the Constitution or state law against a local government's providing the service or function of a historical society or community theater. No local government charter has been submitted with this request for an opinion, so it will be assumed that there are likewise no express charter limitations.

This being the case, the only question remaining is whether a contract with a private organization is a reasonable and appropriate means of providing these services or functions. The choice of a particular mode or manner to accomplish any statutory powers or duties is discretionary with the local governing body, subject only to the requirement that it be reasonable. 37 Op. Att'y Gen. No. 105 (1978). Only in rare cases will the use of a contract for services be held to be an impermissible abuse of discretion.

In 37 Op. Att'y Gen. No. 25 (1977) it was held that a non-profit corporation operating a museum or art gallery is not eligible to receive revenue sharing or county tax funds. That opinion, first, did not involve a local government with self-government powers, and second, dealt with a proposed simple grant or subsidy to a private organization. The issues in the present opinion concerning contracts by the county with a private organization to perform authorized county functions and services were not addressed. Therefore, nothing in 37 Op. Att'y Gen. No. 25 should be construed as being contrary to what is being held herein.

THEREFORE, IT IS MY OPINION:

A local government with self-government powers may provide the services or functions of a museum, historical society or community theater. These services or functions may be provided by a contract with a private organization if such a contract is a reasonable and appropriate method for so doing.

Very truly yours,

MIKE GREELY
Attorney General