

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 37

INTERGOVERNMENTAL COOPERATION - Power of municipal and county housing authorities to enter interlocal agreements;
MUNICIPAL HOUSING AUTHORITY - Power to act beyond territorial jurisdiction;
MUNICIPAL HOUSING AUTHORITY - Power to enter interlocal agreements;
MONTANA CODE ANNOTATED - Sections 2-9-101, 7-15-2111, 7-15-2112, 7-15-4402, 7-15-4413, 7-15-4415, 19-1-102, 76-5-103, Title 7, chapter 11, part 1;
OPINIONS OF ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 75 (1980), 39 Op. Att'y Gen. No. 4 (1981).

HELD: 1. An independent board composed of the commissioners of the Missoula Housing Authority may not utilize the powers and facilities of the Authority to administer the Section 8 rent subsidy program beyond the jurisdictional boundaries of the Authority.

OPINIONS OF THE ATTORNEY GENERAL

2. The Missoula Housing Authority may not enter into an interlocal agreement with Ravalli and Mineral counties to administer the Section 8 rent subsidy programs beyond the jurisdictional boundaries of the Authority.
3. The Missoula Housing Authority may administer the Section 8 rent subsidy program outside the jurisdictional boundaries of the Authority only through a cooperative agreement with other housing authorities under section 7-15-4415, MCA.
4. A municipal housing authority is a public agency which may enter into interlocal agreements.

15 October 1981

Jim Nugent, Esq.
City Attorney
201 W. Spruce Street
Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on the following questions:

1. May the City of Missoula create an additional public housing board as a separate entity from the Missoula Housing Authority which would represent the region comprising Missoula, Mineral and Ravalli counties, consisting of the same commissioners as the Missoula Housing Authority and with access to Missoula Housing Authority services for a fee?
2. May the Missoula Housing Authority, the Mineral County Board of Commissioners and Ravalli County Board of Commissioners enter into an interlocal agreement whereby they could jointly apply to administer the Section 8 Rent Supplement Program in their region with the understanding that the Missoula Housing Authority could administer the rent supplement contracts in Mineral and Ravalli counties?

OPINIONS OF THE ATTORNEY GENERAL

3. If Mineral and Ravalli counties created housing authorities, could those respective housing authorities then enter into an agreement pursuant to section 7-15-4415, MCA, to apply for and have the Missoula Housing Authority administer the Section 8 rent supplement contracts for the entire region?

39 Op. Att'y Gen. No. 4 (1981), held that while municipal housing authorities may administer federal Section 8 housing programs, their authority to do so is generally limited to the area within the city limits and within a ten-mile radius of the city. See §§ 7-15-4413, 7-15-4453, MCA. No statutory authority exists for the arrangements set forth in your first two questions. In both cases the authority or its facilities would serve areas outside of the authority's territorial jurisdiction. Under the reasoning of 39 Op. Att'y Gen. No. 4 (1981), these arrangements are beyond the authority's power.

Your third inquiry involves the application of section 7-15-4415, MCA, which provides:

Cooperation between housing authorities. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

This section creates a narrow exception to the ten-mile radius jurisdictional limit recognized in 39 Op. Att'y Gen. No. 4 (1981). Section 7-15-2112(2), MCA, incorporates by reference for county housing authorities the powers of municipal housing authorities. Section 7-15-2111, MCA, allows a county housing authority to operate within the boundaries of a municipality if the governing body of the municipality consents. Under these two statutes, it is theoretically possible for the counties in the region to establish county housing authorities with the power to administer the Section 8 program on a county-wide basis. I note in passing that

OPINIONS OF THE ATTORNEY GENERAL

your question omits mention of Missoula County, although that county would have to create a housing authority as well for the proposed program to extend to the entire three-county region. If county housing authorities are established, section 7-15-4415, MCA, would allow the Missoula municipal housing authority to contract with the three county housing authorities to administer the Section 8 program.

One mechanism for implementing a cooperative agreement under section 7-15-4415, MCA, is the "Interlocal Cooperation Act," Title 7, ch. 11, pt. 1, MCA. Under the "Interlocal Cooperation Act":

Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform.

§ 7-11-104, MCA. The purpose of these agreements is to allow "public agencies" to "make the most efficient use of their powers...." § 7-11-102, MCA. Such an agreement may be used in the situation outlined by your request.

Section 7-11-103, MCA, defines "public agencies" to include "political subdivisions." Montana statutes vary the definition of "political subdivision" according to the context in which the term is used. For example, in the provisions relating to flood plain management, "political subdivision" is defined as "any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations." § 76-5-103(15), MCA. The statutory scheme is such that a broader definition is not necessary. The term is more broadly defined when used in the context of inclusion of employees of political subdivisions in the Social Security program:

The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions...including leagues or associations thereof.... The term includes special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities, etc.

OPINIONS OF THE ATTORNEY GENERAL

§ 19-1-102(4), MCA. The statutory provisions pertaining to interlocal agreements do not include a definition of "political subdivision." However, since the purpose of the interlocal agreement is to allow "political subdivisions" to provide services more efficiently, to the ultimate benefit of the taxpayers and citizens of Montana, a broad definition of the term is clearly appropriate. As "public corporations," see § 7-15-4402(1), MCA, housing authorities are explicitly recognized as being within the definition of "political subdivisions" in at least two other contexts. See § 2-9-101(1)(e), MCA (tort claims), and § 19-1-102(4), MCA (Social Security). It is my opinion that housing authorities are within the definition of the term "political subdivision" for interlocal agreement purposes as well. You should bear in mind, however, that since section 7-15-4415, MCA, does not require cooperative housing authorities to enter an interlocal agreement, it cannot be presumed that that mechanism was intended as the exclusive means of achieving such cooperation. 38 Op. Att'y Gen. No. 75 (1980).

THEREFORE, IT IS MY OPINION:

1. An independent board composed of the commissioners of the Missoula Housing Authority may not utilize the powers and facilities of the Authority to administer the Section 8 rent subsidy program beyond the jurisdictional boundaries of the Authority.
2. The Missoula Housing Authority may not enter into an interlocal agreement with Ravalli and Mineral counties to administer the Section 8 rent subsidy programs beyond the jurisdictional boundaries of the Authority.
3. The Missoula Housing Authority may administer the Section 8 rent subsidy program outside the jurisdictional boundaries of the Authority only through a cooperative agreement with other housing authorities under section 7-15-4415, MCA.
4. A municipal housing authority is a public

OPINIONS OF THE ATTORNEY GENERAL

agency which may enter into interlocal
agreements.

Very truly yours,

MIKE GREELY
Attorney General