

COUNTIES - Delegation of approval of subdivision plats to planning board;
COUNTY COMMISSIONERS - Delegation of approval of subdivision plats to planning board;
COUNTY OFFICERS AND EMPLOYEES - Delegation of approval of subdivision plats to planning board;
LOCAL GOVERNMENT - Delegation of approval of subdivision plats to planning board;
MUNICIPAL CORPORATIONS - Delegation of approval of subdivision plats to planning board;
MUNICIPAL GOVERNMENT - Delegation of approval of subdivision plats to planning board;
SUBDIVISION AND PLATTING ACT - Delegation of approval of subdivision plats to planning board;
MONTANA CODE ANNOTATED - Sections 7-1-114, 76-3-604, 76-3-608;
MONTANA CONSTITUTION - Article XI, sections 5, 6;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 98 (1980).

HELD: A county commission may not delegate the approval, conditional approval, or rejection of subdivision plats to a planning board or to an administrative officer on the planning board staff.

30 May 1986

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Dear Mr. Deschamps:

I am writing in response to your request for an opinion concerning the following question:

May the approval of subdivision plats be delegated by the governing body to a planning board or to an administrative officer on the planning board staff?

Your letter explains that a decision to approve, deny, or conditionally approve a plat is essentially a factual determination which answers the questions of whether (1) the plat conforms to the standards, and (2) the plat is in the public interest according to the eight criteria of section 76-3-608, MCA. You note that these decisions involve some discretion in reviewing the facts but that they do not involve rulemaking or legislative determinations. You provide authority for the proposition that the Legislature may delegate administrative functions to boards and commissions in carrying out the purposes of statutes and various governmental functions for more efficient administration of the laws. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964); State v. Stark, 100 Mont. 365, 52 P.2d 890 (1935); Antieau, 4 Local Government Law, County Law § 31.08 (Matthew Bender & Company, 1985 supp.).

I have previously addressed the authority of a local government unit to modify the procedural requirements set forth in state zoning laws. 38 Op. Att'y Gen. No. 98 (1980). In that opinion, I examined the powers of a local government with self-government powers to provide an optional appeal of decisions from the local zoning board of adjustment to the legislative body.

The 1972 Montana Constitution provided the framework for a local government to adopt a self-governing charter. Mont. Const. art. XI, § 5. A local government unit which adopts a self-government charter may exercise any power not prohibited by the constitution, law, or charter. Mont. Const. art. XI, § 6. A local government unit without self-government powers has only the general powers specifically provided or implied by law. City of Billings v. Weatherwax, 38 St. Rptr. 1034, 1035-36, 630 P.2d 1216, 1217-18 (1981). In that case, the Montana Supreme Court noted that local governments have only

such power as is granted them by the Legislature. That decision was recently limited in light of the 1972 constitutional provision relating to self-government powers. D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 79-81, 713 P.2d 977, 981-82 (1986). In D & F Sanitation Service, the Court took judicial notice of the fact that the Billings voters had adopted a self-government charter on November 14, 1976. In light of that charter and the new constitutional provisions, the Court recognized that the City of Billings, with its self-government charter, has all powers save those expressly prohibited.

In my opinion at 38 Op. Att'y Gen. No. 98 (1980), I examined the limitation enunciated in section 7-1-114, MCA, on the actions of a local government with self-government powers. Section 7-1-114, MCA, provides:

(1) A local government with self-government powers is subject to the following provisions:

....

(e) All laws which require or regulate planning or zoning;

....

(2) These provisions are a prohibition on the self-government unit acting other than as provided. [Emphasis added.]

There I held that the statute applies to both procedural and substantive laws concerning zoning.

The question you ask is whether the approval of subdivision plats may be delegated by the governing body to a planning board or to an administrative officer on the planning board staff. Section 76-3-604, MCA, provides:

(1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat. [Emphasis added.]

Section 7-1-114, MCA, prohibits a local government unit which has adopted a self-government charter from modifying the procedures set forth in the zoning statutes. A local government unit which is not self-governing has only such power as is expressly granted by the Legislature. City of Billings v. Weatherwax, 38 St. Rptr. at 1035-36, 630 P.2d at 1217-18. It certainly cannot have more power to delegate authority than a self-governing local government unit would have. Generally, the municipal power to review and approve or disapprove subdivision plats is a delegated power, derived from an enabling act or a constitutional provision. Anderson, 4 American Law of Zoning § 23.08 (2d ed. 1977). Here, the Montana Legislature has not provided enabling legislation which would allow a county to delegate the approval, conditional approval, or rejection of a preliminary plat to a planning board or an administrative officer on the planning board staff. Had the Legislature so intended, it could have mirrored the language placed in subsection (1) to allow the governing body or its designated agent or agency to approve, conditionally approve, or reject the plat. It did not do so. The statute expressly provides that the governing body itself shall act to approve, conditionally approve, or reject the preliminary plat.

THEREFORE, IT IS MY OPINION:

A county commission may not delegate the approval, conditional approval, or rejection of subdivision plats to a planning board or to an administrative officer on the planning board staff.

Very truly yours,

MIKE GREELY
Attorney General