VOLUME NO. 42 OPINION NO. 43

HIGHWAYS - Department of Revenue not a zoning authority which may designate an area commercial for outdoor advertising purposes;
LAND USE - Acreage in a zoning district must be one contiguous 40-acre parcel;
REVENUE, DEPARTMENT OF - No zoning authority to designate an area commercial for outdoor advertising purposes;
MONTANA CODE ANNOTATED - Title 15; sections 15-1-101, 15-1-201(1)(b), 15-1-201(6)(a), 15-8-101, 75-15-101 to 75-15-223, 75-15-103(2), 75-15-111, 76-2-101 to 76-2-412, 76-2-101(3).

HELD: 1. A "commercial" designation given by the Department of Revenue for assessment purposes is not applicable to section 75-15-111, MCA, because the Department of Revenue is not a bona fide zoning authority which may designate an area commercial for outdoor advertising purposes.

2. Section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

7 December 1987

M. Shaun Donovan
Mineral County Attorney
Mineral County Courthouse
Superior MT 59872

Dear Mr. Donovan:

You have asked my opinion on two questions which I have rephrased as follows:

1. Whether the "commercial" designation given by the Department of Revenue for assessment purposes is applicable to section 75-15-111, MCA, which permits outdoor advertising in areas zoned commercial by a bona fide state, county, or local zoning authority.

2. Whether section 76-2-101(3), MCA, requires that the acreage in the zoning district be one contiguous 40-acre parcel.

The statute in issue in the first question is section 75-15-111, MCA, which states in pertinent part:

> (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:
>
> ....
>
> (d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;
>
> (e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary [of the United States Department of Transportation] and

> defined by rules adopted by the [state highway] commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months. [Emphasis added.]

While the exception defined in subsection (e) might come into play depending upon facts not available in this opinion request, the central issue raised by the first question is whether the Department of Revenue is a bona fide zoning authority. Although the phrase "bona fide zoning authority" is not defined in the code, careful review of the planning and zoning statutes, §§ 76-2-101 to 412, MCA, and Title 15, MCA, pertaining to taxation, suggests that the Department of Revenue is not a state zoning authority.

The Department of Revenue is charged with the responsibility of supervising "the administration of the assessment and tax laws of the state." §§ 15-1-201(6)(a), 15-8-101, MCA. The Department of Revenue classifies property because it is charged to "adopt rules specifying which types of property within the several classes are considered 'comparable property' as described in 15-1-101." § 15-1-201(1)(b), MCA.

The "commercial" designation assigned by the Department of Revenue is intended to assist in the implementation of the Department's classification system. Section 15-6-101, MCA, is most clear in limiting the applicability of the Department's labels:

> (1) All property in this state is subject to taxation, except as provided otherwise.
>
> (2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with this part. [Emphasis added.]

In short, the taxation statutes directly state that the assessment classifications are made only for tax purposes. To extend the applicability of the tax assessment scheme to zoning restrictions would be an improper reading of the intent of taxation statutes.

The statutes on landscape management, which include the outdoor advertising laws, also support this conclusion. Section 75-15-103(2), MCA, a definitional statute, states:

> "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations or enabling state legislation or state legislation itself, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. [Emphasis added.]

Nowhere in the sections on landscape management, §§ 75-15-101 to 223, MCA, or anywhere else in the code, is mention made of any zoning authority given to the Department of Revenue.

Therefore, it is my opinion that the Department of Revenue is not a bona fide zoning authority. A "commercial" designation given by the Department is for assessment purposes only, and, hence, the designation cannot be applied to section 75-15-111, MCA.

The second issue raised is whether section 76-2-101(3), MCA, requires that the acreage in the zoning district be one contiguous parcel. The answer is found in a direct reading of the language of the statute:

> (1) Whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.
>
> (2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.
>
> (3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres. [Emphasis added.]

The statute requires that the area in the zoning district consist of not less than 40 acres. The clear conclusion to be drawn from this language is that the 40 acres be contiguous. The suggestion that the district can be cobbled together from separate and detached blocks of property directly contradicts the intention of a zoning scheme, which is to provide for an area's organized development. The planning and zoning

chapter, §§ 76-2-101 to 412, MCA, neither contemplates nor sanctions such a palpable evasion of its statutory purposes. See Montana Wildlife Federation v. Sager, 37 St. Rptr. 1897, 1907, 620 P.2d 1189, 1199 (1980) ("[a] statute will not be interpreted to defeat its evident object or purpose; the objects sought to be achieved by the legislation are prime consideration in interpreting statutes"); State ex rel. Florence-Carlton School District No. 15-6 v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978) ("[l]egislation enacted for the promotion of public health, safety, and general welfare, is entitled to 'liberal construction with a view towards the accomplishment of its highly beneficent objectives'."). In light of these parameters, it is my opinion that a direct reading of section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

THEREFORE, IT IS MY OPINION:

1. A "commercial" designation given by the Department of Revenue for assessment purposes is not applicable to section 75-15-111, MCA, because the Department of Revenue is not a bona fide zoning authority which may designate an area commercial for outdoor advertising purposes.

2. Section 76-2-101(3), MCA, requires that the acreage in a zoning district be one contiguous 40-acre parcel.

Very truly yours,

MIKE GREELY
Attorney General