

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 81

CITIES AND TOWNS - Whether statutes allowing local governments to contract with private parties to build, maintain, or operate jails conflict with statutes

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regulating indebtedness, contracts, provision of jail facilities, or interlocal agreements of local governments;

CORRECTIONAL FACILITIES - Whether statutes allowing local governments to contract with private parties to build, maintain, or operate jails and permitting multi-county jails conflict with statutes regulating indebtedness, contracts, provision of jail facilities, or interlocal agreements of local governments;

COUNTIES - Whether statutes allowing local governments to contract with private parties to build, maintain, or operate jails and permitting multi-county jails conflict with statutes regulating indebtedness, contracts, provision of jail facilities, or interlocal agreements of local governments;

MONTANA CODE ANNOTATED - Title 7, chapter 5, part 23; 7-5-2101, 7-5-2306, 7-5-2307, 7-11-104, 7-32-2201 to 7-32-2234, 7-32-4201 to 7-32-4203;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 70 (1988), 42 Op. Att'y Gen. No. 13 (1987), 39 Op. Att'y Gen. No. 37 (1981), 38 Op. Att'y Gen. No. 101 (1980), 38 Op. Att'y Gen. No. 75 (1980), 37 Op. Att'y Gen. No. 152 (1978).

HELD: Chapter 447, 1985 Mont. Laws, does not directly conflict with Montana statutes regulating the indebtedness, contracts, jail facilities, or interlocal agreements of local governments. However, chapter 447 is subject to the various applicable limitations contained in those statutes.

6 May 1988

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You have requested an opinion concerning:

Whether the act allowing counties to contract with private parties for the building, maintenance, and operation of jails (1985 Mont. Laws, ch. 447) conflicts with any statutes regulating indebtedness, contracts, jail facilities, or interlocal agreements entered into by local governments.

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Chapter 447, 1985 Mont. Laws, created four new statutes and revised fifteen others. Part of its purpose was stated in the first section:

It is the purpose of 7-32-2231 through 7-32-2234 to allow regional or single-county jails to be built by private industry and leased back to the participating county or counties for operation by the county, collectively by participating counties, or by a private entity with the concurrence of the sheriff or sheriffs involved.

§ 7-32-2231, MCA. To further this purpose, new statutes were written which detailed the requirements for jail contracts between counties and private parties (§ 7-32-2232, MCA), set forth the procedures for counties to follow in requesting and selecting bid proposals (§ 7-32-2233, MCA), and enumerated the powers of jail administrators and private-party jailers (§ 7-32-2234, MCA). Amendments to existing statutes allowed counties to act in common to provide jail facilities, either public or private (§ 7-32-2201(2), MCA), and to maintain and operate, as well as build, such jails (§§ 7-32-2204 to 2207, MCA).

Section 7-32-2201, MCA, requires counties to provide jail facilities. As I noted recently (42 Op. Att'y Gen. No. 70, (1988)), municipalities are not required to provide jail facilities, but do have the power to incarcerate offenders. Chapter 447, 1985 Mont. Laws, made several revisions to existing statutes so that the counties' responsibility to provide jail facilities could be carried out consistently with the goal of allowing counties to enter into agreements under which private parties would build, maintain, or operate jails (1985 Mont. Laws, ch. 447, §§ 10 to 19). I find that chapter 447, 1985 Mont. Laws, is not in conflict with either county or municipal powers or duties regarding jail facilities (§§ 7-32-2201 to 2234, 7-32-4201 to 4203, MCA).

With regard to interlocal agreements, section 7-11-104, MCA, allows local governments to contract with each other to perform jointly any undertaking which they are authorized by law to perform individually. (See 39 Op. Att'y Gen. No. 37 at 147 (1981), 38 Op. Att'y Gen. No. 75 at 261 (1980).) I find nothing in chapter 447 concerning the counties' responsibilities to provide jail facilities, nor in sections 7-32-4201 and 7-32-4203, MCA, concerning the powers of municipalities with regard to jails, that is inconsistent with interlocal agreement statutes. Therefore, interlocal

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agreements regarding jail services may be used where authorized by law. Of course, the relevant provisions of an interlocal agreement should be disclosed to a private party who has contracted to operate a jail.

The statutes regulating county contracts are contained in Title 7, chapter 5, part 23, MCA. County commissioners have general authority to enter into contracts (§ 7-5-2101, MCA) as well as specific authority to enter into installment purchase contracts (§ 7-5-2306, MCA) and rental-purchase contracts (§ 7-5-2307, MCA). Although no special amendments to these county contracting statutes were included in chapter 447, 1985 Mont. Laws, I see no conflicts between the statutes authorizing private parties to build, maintain, or operate jails (§§ 7-32-2231 to 2233, 7-7-2201, 7-7-2203, MCA), and those statutes authorizing counties to enter various types of contracts (§§ 7-5-2101, 7-5-2306, 7-5-2307, MCA). While there is no basic conflict among these statutes, the specific statutory conditions of each type of contract must be met. (See 37 Op. Att'y Gen. No. 152 at 627 (1978), 38 Op. Att'y Gen. No. 101 at 349 (1980).)

Your final question asks whether there is any conflict between chapter 447, authorizing private parties to build, maintain, or operate jails, and the statutes which regulate the amount of indebtedness which local governments may incur. Chapter 447 made specific changes to the bonded indebtedness statutes (§§ 5, 6) to allow for the funding of multi-county jail facilities for use by counties other than those in which the facilities are located. I find this language limiting the purposes for which general obligation bonds may be issued to in-county projects to have been properly amended for multi-county jails by chapter 447, sections 5 and 6. The other language in the statutes limiting county indebtedness (concerning total amounts, purposes, etc., cf. 42 Op. Att'y Gen. No. 13 (1987)) does not create any direct conflict with chapter 447. While these limitations must be observed where applicable, they do not constitute a direct conflict that would render chapter 447 a nullity.

THEREFORE, IT IS MY OPINION:

Chapter 447, 1985 Mont. Laws, does not directly conflict with Montana statutes regulating the indebtedness, contracts, jail facilities, or interlocal agreements of local governments. However, chapter 447 is subject to the various applicable limitations contained in those statutes.

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Very truly yours,

MIKE GREELY
Attorney General