

VOLUME NO. 43

OPINION NO. 61

CITIES AND TOWNS - Power to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;
COURTS, CITY - Power to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;
LOCAL GOVERNMENT - Power of third-class city or town to establish office hours other than between 8 a.m. and 5 p.m. Monday through Friday;
MONTANA CODE ANNOTATED - Sections 1-1-301(4), 1-2-102, 3-1-301, 3-1-302, 3-11-101, 7-4-102(1), (3), 7-4-4101(1)(c), 7-4-4102(1)(c), 7-4-4103(1)(c);
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 49 (1989), 43 Op. Att'y Gen. No. 27 (1989), 43 Op. Att'y Gen. No. 16 (1989).

- HELD: 1. A city judge is not prohibited by section 3-11-101, 3-1-301, or 3-1-302, MCA, from establishing regular sessions of the court during evening hours other than on Sundays or other legal holidays.
2. Subject to the provisions of section 7-4-102(3), MCA, applicable to third-class cities or towns, so long as the city court is open between the hours of 8 a.m. and 5 p.m. Monday through Friday for the transaction of business, such as the filing of court

documents with the clerk, section 7-4-102(1), MCA, does not prohibit the city judge from establishing regular evening sessions of the court.

3. Section 7-4-102(3), MCA, permits the governing body of a third-class city or town to set the office hours of the city court at times other than between 8 a.m. and 5 p.m. Monday through Friday, except Sundays and other legal holidays.

May 17, 1990

Frank Altman
Harlem City Attorney
P.O. Box 268
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Dear Mr. Altman:

As legal advisor for the City of Harlem, you have requested my opinion on the following questions:

1. Does section 3-1-301, MCA, permit a city court judge to set business hours other than between 8 a.m. and 5 p.m. weekdays?
2. Does section 7-4-102(3), MCA, permit the governing body of a third-class city or town to set the business hours of the city court at times other than between 8 a.m. and 5 p.m. weekdays?

Your inquiry arises out of the apparent practice of the Harlem City Judge to hold regular sessions of court between the hours of 5:30 p.m. and 6:30 p.m., Monday through Friday. You question whether in the first instance the city judge is permitted by statute to set such hours and, if not, whether Montana law allows the city governing body to permit or establish such hours by ordinance.

Section 3-11-101(1), MCA, establishes a city court in each city or town and requires the city judge to establish regular sessions of the court. It further provides: "On judicial days, the court shall be open for all business, civil and criminal." See also § 3-1-301, MCA. Although state law does not define judicial days, section 3-1-302, MCA, entitled "nonjudicial day," provides:

- (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the

governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

- (a) to give, upon its request, instructions to a jury when deliberating on its verdict;
 - (b) to receive a verdict or discharge a jury;
 - (c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.
- (2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day.

I recently held that this section prohibits a court from conducting a criminal trial on Sunday, except to conclude a trial already initiated. 43 Op. Att'y Gen. No. 27 (1989). Further, the requirement that the court be open for the transaction of business does not necessarily translate into a requirement that the presiding judge be present during those hours. See, e.g., 43 Op. Att'y Gen. No. 49 (1989).

Although it has been held that a court can only exercise its jurisdiction at the time and place fixed by statute, Thompson v. Commonwealth, 99 S.W.2d 705, 706 (Ky. 1936); Bradley v. State, 213 S.W.2d 901, 902-03 (Ark. 1948), it is generally recognized that so long as it is within the statutory limits the time for transaction of judicial business is within the discretion of the judge. Jennett v. State, 168 So. 224 (Ala. Ct. App. 1936); Martinez v. State, 569 P.2d 497, 502 (Okla. Crim. App. 1977); Rhodes v. Crites, 113 N.W.2d 611, 616 (Neb. 1962). "A basic inherent power of any court in the administration of justice is the ability to control its own trial docket. This inherent power includes setting time for trial." Seastrom v. Konz, 544 P.2d 744, 746 (Wash. 1976).

The Montana Code sections pertaining to the time for conducting court business generally refer to days rather than to specific hours. See §§ 3-11-101(1), 3-1-301, 3-5-401(1), MCA. As used throughout the Code, the term "day" means "the period of time between any midnight and the midnight following." § 1-1-301(4), MCA. Thus, section 3-11-101, MCA, read together with sections 3-1-301 and 3-1-302, MCA, contains nothing which would prohibit a city court judge from establishing evening sessions of the court, so long as regular sessions are not convened on legal holidays and the court is open for business on judicial days. These sections place no limitations upon the hours of business.

There is, however, another applicable statute which must be considered. Section 7-4-102(1), MCA, requires that all local government offices be kept open for the transaction of business continuously from 8 a.m. until 5 p.m.

each day except Saturdays and legal holidays. See 43 Op. Att'y Gen. No. 16 (1989). The city judge, being an officer of a city or town, §§ 7-4-4101(1)(c), 7-4-4102(1)(c), 7-4-4103(1)(c), MCA, is subject to the provisions of section 7-4-102, MCA, and must, absent the governing body's action pursuant to section 7-4-102(3), MCA, keep his or her office open during the hours specified therein. This does not mean, however, that the city judge is prohibited from setting office hours after 5 p.m. on weekdays. Section 7-4-102(1), MCA, further provides: "Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires." So long as the office of the city court is open during the required hours for the transaction of business, "such as the filing of court documents with the clerk," 43 Op. Att'y Gen. No. 49 at 5, the city judge may set additional hours for the regular sessions of the court.

This conclusion finds support in case law from other jurisdictions. For example, in Seastrom v. Konz, *supra*, a defendant in a criminal case challenged the practice of the part-time justice of the peace to conduct evening trials. The applicable statute provided:

All state elective and appointive officers shall keep their offices open for the transaction of business from eight o'clock a. m. to five o'clock p. m. of each business day from Monday through Friday, state legal holidays excepted. On Saturday, such offices may be closed.

This section shall not apply to the courts of record of this state or to their officers nor to the office of the attorney general and the lieutenant governor.

Id., 544 P.2d at 746. Noting that justice of the peace courts, known as district courts in the state of Washington, are not courts of record, the court nonetheless concluded that the setting of evening trials was permissible. *Id.* The court relied on the inherent power of every court to control its docket, and found that that power included the setting of time for trial. *Id.* The court further concluded: "To allow evening trials enables part-time district court judges ... to devote a portion of the day to their private occupations." *Id.* Finally, the court found that an evening trial in a criminal case did not violate either the due process clause or the equal protection clause. *Id.*

A similar conclusion was reached in State v. Pauly, 99 N.W.2d 889 (Minn. 1959), where the court considered a challenge to the setting of a municipal court trial at 8 p.m. Minnesota law governing municipal courts provided: "The court shall be opened every morning, except on Sundays and holidays, for the hearing and disposition, summarily, of all complaints made of offenses committed within the county, of which the court has jurisdiction." *Id.*, 99 N.W.2d at 890. Recognizing that "municipal courts, being creatures of statute, are limited to the authority delegated by the enabling acts under which they

are organized[,]" *id.* at 891, the court nonetheless found the evening trial setting permissible. It construed the statute to require the municipal court to be open in the mornings for disposition of complaints and other matters not requiring trial, but found that the setting of trial times was within the court's discretion, dependent upon the convenience of the court, counsel, and the parties and witnesses. The court stated: "Where experience indicates that such convenience will be better served by trials of such complaints after 7 p. m., it would seem to be well within the inherent power of these courts to adopt rules accordingly." *Id.* at 891.

Since the city of Harlem is a third-class city or town, you request interpretation of the powers of the governing body under section 7-4-102(3), MCA. That section was enacted in response to 43 Op. Att'y Gen. No. 16, in which I concluded that section 7-4-102, MCA, did not allow a city to enact an ordinance reducing the number of hours during which city offices must be open. See Minutes of the House Committee on Local Government, 51st Leg., 1st Special Sess., June 27, 1989, at 1-3; Minutes of the Senate Committee on Education and Cultural Resources, 51st Leg., 1st Special Sess., June 22, 1989, at 1-2. Subsection (3) of section 7-4-102, MCA, provides: "The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business that are different from the days and times required by subsection (1)."

You question whether subsection (3) would allow the governing body of a third-class city or town to enact an ordinance establishing hours of the city court outside the times of 8 a.m. to 5 p.m. Monday through Friday. You suggest that since the amendment was intended to allow such cities and towns to reduce the number of hours during which city offices must be open, it permits the establishment of hours only within the time frame set forth in subsection (1). I respectfully disagree.

Subsection (3) plainly grants the governing bodies of third-class cities and towns the power to set "days and times" different from those required by subsection (1). When the language of a statute is plain and unambiguous the statute speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Although legislative intent generally controls in the interpretation of a statute, § 1-2-102, MCA, such intent is first to be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, no other means of interpretation may be applied. Boegli v. Glacier Mountain Cheese Co., 46 St. Rptr. 1389, 1391, 777 P.2d 1303, 1305 (1989). Thus, if the language is unambiguous, the rules of statutory construction are not invoked. *Id.*; see also Phelps v. Hillhaven Corp., 231 Mont. 245, 251, 752 P.2d 737, 741 (1988). Further, the language of the statute must be given its plain and ordinary meaning. Rierson v. State, 188 Mont. 522, 527, 614 P.2d 1020, 1023, on reh'g, 622 P.2d 195 (1980). Giving "different" its plain and ordinary meaning, i.e., "distinct, separate, not the same, other" (Webster's New International Dictionary 727 (2d ed. 1941)),

I conclude that interpreting it to mean "less than" would be artificially restrictive.

It has been suggested, however, that giving "different" its ordinary meaning conceivably would allow third-class cities and towns the power to set city office hours on Sundays or other legal holidays. As applied to the city court, of course, section 3-1-302, MCA, would prohibit the city from enacting such an ordinance. For purposes of this opinion, I need not consider the application of section 7-4-102(3), MCA, with respect to other city offices.

THEREFORE, IT IS MY OPINION:

1. A city judge is not prohibited by section 3-11-101, 3-1-301, or 3-1-302, MCA, from establishing regular sessions of the court during evening hours other than on Sundays or other legal holidays.
2. Subject to the provisions of section 7-4-102(3), MCA, applicable to third-class cities or towns, so long as the city court is open between the hours of 8 a.m. and 5 p.m. Monday through Friday for the transaction of business, such as the filing of court documents with the clerk, section 7-4-102(1), MCA, does not prohibit the city judge from establishing regular evening sessions of the court.
3. Section 7-4-102(3), MCA, permits the governing body of a third-class city or town to set the office hours of the city court at times other than between 8 a.m. and 5 p.m. Monday through Friday, except Sundays and other legal holidays.

Sincerely,

MARC RACICOT
Attorney General