

Opinion No. 3**Municipalities—Expenditures—Expressed and Implied Powers.**

Held: (1) An expenditure by a Mayor of \$100.00 and itemized as "Good will trip to Alaska \$100.00", is not authorized expressly by statute, nor is it an implied authorization contemplated by law and therefore improper.

January 18th, 1949.

Mr. W. A. Brown
State Examiner
Capitol Building
Helena, Montana

Attention: Mr. A. M. Johnson, First Assistant State Examiner

Dear Mr. Johnson:

You have requested my opinion as to the legality of a claim submitted by the Mayor of Great Falls and payable to him drawn on the general fund of the City of Great Falls, and authorized by the Council for the amount of \$100.00 and itemized as "expenses on good will trip to Alaska—\$100.00".

It is the general rule that municipal funds cannot be expended for private or non-public uses. (37 Am. Jur. Section 127, page 740, Municipal Corp.). It has been held that a municipality has no power to make expenditures for advertising or other forms of publicity in the absence of Legislative authority. (37 Am. Jur. Section 127, page 740, Municipal Corp.). As stated in the annotation to the case of *J. B. Loeb vs. City of Jacksonville*, 134 So. 205, 79 A.L.R. 459, see Annotation to this case, 79 A.L.R. 466:

"It is well settled that a municipal corporation has only such powers as are clearly and unmistakably granted to it by its charters or by other acts of the Legislature, and consequently can

exercise no powers not expressly granted to it, except those which are necessarily implied or incidental to the powers expressly granted and those which are indispensable to the declared objects and purposes of the corporation".

See also 19 Ruling Case Law, Section 75, (Municipal Corporation) page 768.

Montana has narrowed this rule to a slight degree and the rule of this jurisdiction is that:

"The statutory provisions creating a municipality are its charter powers and it has only such authority as is therein conferred expressly or therefrom necessarily implied or is indispensable in order properly to accomplish the purpose of its organization (State Ex Rel City of Butte vs. Police Court, 65 Montana 94, 210 Pac. 1059), and whenever there is a doubt, as to the existence of a particular power, the doubt will be resolved against the municipality, and the right to exercise that power withheld".

State Ex Rel Quinten vs. Edwards, 40 Montana 287, 160 Pac. 395.

Helena Light & Railroad Company vs. City of Helena, 47 Montana 18, 130 Pac. 446.

Wilbaur Improvement Company vs. Breitenfelt, 67 Montana 206, 215 Pac. 222.

The powers of cities and towns are set forth in Chapter 383, Section 5039 of the Revised Codes of Montana, 1935. There is nothing therein contained that would seem to authorize the expenditure of the city funds for the purpose mentioned in the question. Therefore, under the rule that unless expenditures, not expressly authorized, are necessarily incidental to powers given by statutes, I do not think they are proper.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.