

VOLUME NO. 37

OPINION NO. 140

CITIES AND TOWNS - Claims against, timely presentment;
REVISED CODES OF MONTANA, 1948 - Section 11-1301.

HELD: Section 11-1301 bars the city's payment of that part of the claim which represents items which were purchased by the city more than one year prior to the date of presentment of such claim.

24 April 1978

Kenneth R. Wilson, Esq.
City Attorney
Miles City, Montana 59301

Dear Mr. Wilson:

You have requested my opinion on the following question:

Does section 11-1301, R.C.M. 1947 bar the city's payment of claims for items purchased prior to June 9, 1976 and which were not presented for payment until June 9, 1977?

From June 17, 1975 until June 9, 1977, Miles City purchased numerous items of merchandise from Midland, Inc. for use in various city departments. The items were obtained pursuant to written purchase orders each of which stated that "[t]his purchase order must be attached to and returned with claim." Midland, Inc. submitted a claim for the entire amount of these purchases, \$2,163.89, on June 9, 1977. Of this amount, \$841.92 was for items purchased prior to June 9, 1976.

Section 11-1301 provides that a demand or account against a city must be presented to the council within one year from the date it accrued, and if not so presented "is forever barred...." If the \$841.92 represents demands or an account which accrued prior to June 9, 1976, the city may not pay it because section 11-1301 specifically provides that "the council has no authority to allow any account or demand not so presented."

In determining accrual of claims against a municipality, time is computed according to general principals of law. 17 McQuillin Municipal Corporation section 48.06 at 79 (1968). The series of purchases you describe is not an "account" to

which is applied the special rule that the limitation runs from the date of the last item. In order for this rule to apply, the claim must represent the "balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties...." Section 93-2614. Those conditions are clearly not met here. Each purchase therefore represented a separate demand against which the limitation ran.

Denying payment for the purchases made prior to June 9, 1976, may seem unduly harsh, especially if the claims were not timely presented due to honest inadvertance, but it is mandated by statute and supported by sound policy reasons:

By such a requirement a municipality is afforded some protection against stale claims or the connivance of corrupt officials, and is given the opportunity to investigate the source of the claim at a time when the evidence relating to it is fresh and more readily to be had.

McQuillan, section 48.02 at 61.

In order to prevent merchants from submitting improper claims, I suggest that you include the text of section 11-1301 on all future purchase order forms explaining that claims must be made within a year of accrual.

THEREFORE, IT IS MY OPINION:

Section 11-1301 bars the city's payment of that part of the claim which represents items which were purchased by the city more than one year prior to the date of presentment of such claim.

Very truly yours,

MIKE GREELY
Attorney General