

VOLUME NO. 37

OPINION NO. 68

LOCAL GOVERNMENT - Self-Government Powers; SALARIES - Local Government Officials; COUNTY ASSESSOR - Status Under Self-Government Charter; REVISED CODES OF MONTANA, 1947 - Section 25-605 and Title 47A.

- HELD: 1. Under a form of government with local self-government powers the replacement of former county officers with department supervisors is a legitimate exercise of such local self-government powers.
2. Recent amendments to section 25-605, R.C.M. 1947, raising the salary of certain county officials, do not apply to the appointed department supervisors in Anaconda-Deer Lodge County by virtue of the self-government charter recently adopted in that community.
3. The Anaconda-Deer Lodge Commission does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of county assessor.

22 September 1977

John N. Radonich, Esq.
Anaconda-Deer Lodge County Attorney
Anaconda-Deer Lodge County Courthouse
Anaconda, Montana 59711

Dear Mr. Radonich:

You have requested my opinion concerning the following questions:

1. In the transition to a new form of local government, is the replacement of former county officers with department supervisors a legitimate exercise of local self-government powers?
2. Do the salary increases authorized by recent amendments to section 25-605, R.C.M. 1947,

apply to the department supervisors in charge of the former offices of clerk and recorder, clerk of the court, county treasurer, sheriff, and county superintendent of schools, who now are appointed positions by virtue of the self-government charter recently adopted in Anaconda-Deer Lodge County?

3. What is the status of the county assessor under a recently adopted self-government charter?

Anaconda-Deer Lodge has recently adopted a charter form of government with self-government powers pursuant to Article XI, section 5, of the Montana Constitution and section 47A-3-208, R.C.M. 1947. The self-government provisions of Title 47A were enacted in 1975 and became effective on May 2, 1977. These provisions are contrary to the previously well-settled principle that local governments had only those powers specifically granted them by state law. Compare, Leishner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). It is therefore important to briefly review the new self-government provisions before we attempt to determine the precise effect the changes have had on prior authority.

Article XI, section 6, of the Montana Constitution provides:

A local government unit adopting a self-government charter may exercise any power not prohibited by this Constitution, law, or charter.

The convention notes to that section clearly indicate that local government units with self-government powers have all powers not specifically denied.

Title 47A of the Revised Codes of Montana defines the powers and limitations of self-government localities. Section 47A-7-102 affirms the constitutional provision that a local government unit with self-government powers may exercise any power or perform any service or function not prohibited by the constitution, law, or charter. Section 47A-7-103 provides that a self-government unit which performs a service or function which may also be performed by a general power government is not subject to the limitations that may be placed on the general power governments but is subject only to state laws that are made specifically applicable to self-government units. And, under section 47A-7-106, local

self-government powers must be liberally construed and every reasonable doubt must be resolved in favor of the local unit.

Title 47A contains specific statutory limitations upon self-government powers. Generally speaking, Section 47A-7-204 provides that the local unit is subject to all state provisions that involve: (a) the election or establishment of local governments; (b) eminent domain and zoning requirements; (c) laws regulating the budget, finance or borrowing procedures and powers of local government; and (d) laws requiring local governments or officers to perform a specific function or service. Sections 47A-7-201 and 202 provide a list of other specific powers prohibited to the locality, which include a wide range from the imposition of a sales tax to the denial of a certificate of public convenience.

Of fundamental importance is the fact that self-government units also prohibit the exercise of any power in a manner "inconsistent with state law or administrative regulations in any area that is affirmatively subjected by law to state regulation or control," by section 47A-7-203. That section further provides that:

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation, and

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules or regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

Consequently, in determining whether a self-government power is authorized, it is necessary to: 1) consult the charter and consider constitutional ramifications; 2) determine whether the exercise is prohibited under the various provisions of section 47A or other statute specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section 47A-7-203. If none of the above conflict, then the power should be liberally construed in favor of the self-government unit.

As mentioned above, Anaconda-Deer Lodge County has adopted a charter form of consolidated local government pursuant to section 47A-3-208. Under its charter the governing commission adopted Resolution #1, which provides in essence that the offices of certain elected officials are abolished and replaced by appointed supervisors of the various departments. Those departments include the former office of clerk and recorder, clerk of the court, treasurer, sheriff, and county superintendent of schools. As I understand it, Resolution #1 does not eliminate the functions or services previously performed under those elected officials.

Both Article XI, section 7(3), Montana Constitution and section 47A-3-208(2) provide that:

Charter provisions establishing executive, legislative and administrative structure and organization are superior to statutory provisions.

In addition, chapter 477, Laws of 1977, created section 47A-3-108 which gives consolidated local governments with self-government powers authority over local offices and functions created under general laws:

Operation of Self-Government Consolidated Units of Local Government.

(2)...The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government, notwithstanding the fact that the state law may assign the function or service to a specific office.

Article III, section 1 of the Anaconda-Deer Lodge Charter gave the governing commission that capability:

Except as otherwise provided by the Charter, the commission shall exercise all powers of Anaconda-Deer Lodge County which include, but are not limited to, the power:

h. to establish and prescribe functions of all administrative departments and agencies, and

i. to create, transfer, reorganize, adjust, abolish, or absorb the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments.

The commission exercised the powers granted to it by the charter with the adoption of Resolution #1. It is apparent that the implementation of the appointed supervisor system is a proper function of a self-government unit under the above-cited provisions. There are no specific limitations upon the exercise of that power in Title 47A, or other statute; nor is it inconsistent with state law in an area that has been affirmatively subjected to state control. In fact, the power is expressly delegated to self-governments and is totally consistent with the intent of the constitutional convention and the Legislature in providing for self-government powers.

Your second question is whether recent amendments to section 25-605, increasing the salaries of certain county officers, apply to the department supervisors of Anaconda-Deer Lodge County. It is my opinion that section 25-605 does not apply to self-government units. As section 25-605 is not a state law that specifically applies to self-government units, it may be superseded by ordinance or resolution of the commission as noted in section 47A-7-105. The Anaconda-Deer Lodge Charter provides that the administrative structure is to be established by the commission. Moreover, as noted above, section 47A-3-108 expressly gives self-government units the authority to combine or abolish offices or exchange the functions of any local office irrespective of other state laws. Implicit within those capabilities is the authority to establish salaries.

A question does arise as to whether setting the salary level of those county officials is prohibited by statutory limitations on self-government power. Section 47A-7-204 provides in pertinent part:

Mandatory Provisions

A local government unit with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:

....

(7) Any law regulating the budget, finance or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply. (Emphasis added.)

It is my opinion that that section applies to the budget procedures and powers of local governments and does not apply to individual items within particular budgets. When the language of a statute can be interpreted from its plain meaning it has been held that there is nothing left to construe. Keller v. Smith, 33 St. Rep. 228, 553 P.2d 1002 (1976). The issue we deal with here does not address the Anaconda-Deer Lodge budget procedures or powers.

There are no constitutional or specific statutory prohibitions regarding the exercise of that authority; nor, regarding those supervisors, is the exercise inconsistent with state law in an area that has been affirmatively subjected to state control as defined by section 47A-7-203. Again section 47A-7-106 provides that every reasonable doubt as to the existence of a local self-government power or authority should now be resolved in favor of the local government.

The office of county assessor, however, is different than the offices described above. The duties and functions of the office of county assessor are within an area that is affirmatively subjected to state control.

The Constitution of Montana, Article VIII, § 3, provides:

The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law. (Emphasis added.)

36 OP. ATT'Y. GEN. NO. 68 held that the burden of maintaining the office of county assessor rests with the Department of Revenue. That opinion described at length the authority of the State Department of Revenue regarding the appraisal and taxation of all property within the state, basing its decision primarily upon the Constitutional provision quoted above and chapter 4, Title 84, R.C.M. 1947. Under those provisions the department is directed to establish rules and regulations as well as enforce the statutory provisions regarding the appraisal and assessment of property. Section 84-402(2) even makes county assessors agents of the department.

As noted earlier, section 47A-7-203 precludes a local government with self-government powers from exercising any power in a manner inconsistent with state law in any area affirmatively subjected to state regulation and control. Clearly, the duties and functions of the office of county assessor is in an area that is affirmatively subjected to state control as defined by that statute and consequently local ordinances must be consistent with state law. Of course, there is nothing in state law that precludes the assessor from being appointed in the same manner as the other county officers. See section 61-2406 and section 47A-3-108.

THEREFORE, IT IS MY OPINION:

1. Under a form of government with local self-government powers the replacement of former county officers with department supervisors is a legitimate exercise of such local self-government powers.
2. Recent amendments to section 25-605, R.C.M. 1947, raising the salary of certain county officials, do not apply to the appointed department supervisors in Anaconda-Deer Lodge County by virtue of the self-government charter recently adopted in that community.
3. The Anaconda-Deer Lodge Commission does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of county assessor.

Very truly yours,

MIKE GREELY
Attorney General