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OPINION NO. 81

BUILDING CODES - State Building Code, adoption by local governing bodies, prohibition against more stringent standards; LOCAL GOVERNMENT - State Building Code, adoption by local governing bodies, prohibition against more stringent standards; REVISED CODES OF MONTANA, 1947 - Section 69-2112(1).

HELD: Section 69-2112(1), R.C.M. 1947, prohibits local governing bodies from adopting building codes more stringent than those adopted by the state.

17 October 1977

Jack C. Crosser, Director
Department of Administration
S.W. Mitchell Building
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion on the following question:

Does section 69-2112, R.C.M. 1947, prohibit local governing bodies from adopting building codes more stringent than those adopted by the state?

Title 69, chapter 21, R.C.M. 1947, establishes a state building code designed to "provide reasonably uniform standards and requirements" for building construction. The Department of Administration is required to promulgate building codes for all classes of buildings. Local governing bodies are empowered to enforce a local building code, but if they do not, state enforcement of the state building code will prevail.

Section 69-2112(1), prior to being amended in 1977, read as follows:

The local legislative body of a municipality may adopt a municipal building code by ordinance to apply to the municipal jurisdictional area. A municipal building code shall require standards equal to those of the state building code or higher standards. A municipal building code must cover all general areas included in the state building code.

This provision required the local codes to be patterned after the state code, but clearly allowed for the adoption of more stringent standards. Section 69-2112(1) was amended by ch. 504, Laws of 1977, and now reads as follows:

The local legislative body of a municipality or county may adopt a municipal building code by ordinance to apply to the municipal or county jurisdictional area. A municipal or county building code may include only codes adopted by the department.

The new statute deletes the language that the local regulations "shall" be equal to or higher than the state building code, and the former requirement that the local code "must" cover all areas covered by the state building code.

This is clearly an instance in which the Legislature intended an amendment to change the substance of a statute. Comparing the former language of section 69-2112(1) with its present form, it is apparent that a local governing body may now adopt only provisions of the state building code, and no other provisions. This would apply either to lower or higher standards. I have previously held that a local building code may include part, but need not include all, of the state building code (37 OP. ATT'Y GEN. NO. 66). The effect of section 69-2112(1), makes the state building code the only standards local governing bodies may adopt.

THEREFORE, IT IS MY OPINION:

Section 69-2112(1), R.C.M. 1947, prohibits local governing bodies from adopting building codes more stringent than those adopted by the state.

Very truly yours,

MIKE GREELY
Attorney General