

VOLUME NO. 38

OPINION NO. 29

ATTORNEYS - Employment and compensation of attorneys in connection with Special Improvement Districts;
ATTORNEYS FEES - Employment and compensation of attorneys in connection with Special Improvement Districts;
MUNICIPAL CORPORATIONS - Employment and compensation of attorneys in connection with Special Improvement Districts;
LAND USE - Employment and compensation of attorneys in connection with Special Improvement Districts;
MONTANA CODE ANNOTATED - Section 7-12-4101.

HELD: A developer seeking creation of a special improvement district has no authority to designate a private attorney to perform legal services in connection with the SID or to fix the fee of such legal services.

18 July 1979

Mae Nan Ellingson, Esq.
Deputy City Attorney
201 West Spruce Street
Missoula, Montana 59801

Dear Ms. Ellingson:

You have requested an opinion concerning the following question:

Can a city deny a developer's request to designate a private attorney as the attorney for a special improvement district and specify the amount of the attorney's fee?

In conjunction with your request, you have supplied this office with background information indicating that the city of Missoula has customarily employed the city attorney's office to do all legal work in connection with special improvement districts (SID's). The city pays a one percent fee for those services. However, several developers have recently submitted SID petitions setting forth attorney's fees of three and one-half percent as expenses of proposed districts and designating named, private attorneys to perform legal services in connection with the districts. Attempts by developers to designate private attorneys for SID's have occurred in connection with subdivisions in which developers still own all of the lots. Costs in such cases are typically passed on to subsequent third party purchasers. You have pointed out that the relatively large, three and one-half percent fee which developers propose to pay their designated private attorneys could be used to underwrite other legal costs associated with subdivisions.

Notwithstanding, developer's designations of private attorneys, the Missoula City Council has not contracted with nor requested any attorney designated by a developer to perform legal services in connection with an SID and has continued to employ the city attorney's office to perform SID legal work. Nonetheless, the city is presently being asked by one developer's attorney for substantial legal fees for services allegedly rendered in connection with an SID. Several items enumerated in the attorney's bill for service do not relate to the SID but rather to other legal work involving the subdivision work, strengthening the city's fear that developers could use SID legal fees to underwrite other legal costs of their subdivisions.

The contention that a developer can compel a city to employ and pay a private attorney designated by him is preposterous. Special improvement districts are creatures of statute. The power to create them is expressly and unequivocally vested in the city, specifically the city council. § 7-12-4101, et seq., MCA (§ 11-2201, et seq., R.C.M. 1947). The statutes vesting that power in the city council "measures its authority...." Johnston v. City of Hardin, 55 Mont. 574, 580, 179 P. 824 (1919). There is nothing whatsoever in the provisions governing the establishment of SIDs which remotely suggests that the city must hire an attorney designated by a developer or that a developer may determine the amount of SID legal fees. Moreover, a city council may not delegate its statutory authority to private individuals. Haines v. City of Polson, 123 Mont. 469, 482-483, 215 P.2d 950 (1950). Unless the city contracts with a private attorney to perform specific legal services for an SID it has no statutory duty or power to compensate a private attorney.

THEREFORE, IT IS MY OPINION:

A developer seeking creation of a special improvement district has no authority to designate a private attorney to perform legal services in connection with the SID or to fix the fee for such legal services.

Very truly yours,

MIKE GREELY
Attorney General