

VOLUME NO. 38

OPINION NO. 64

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING -  
Application of Montana Plumbers Licensing Act on Malmstrom  
Air Force Base;  
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Application of  
Montana Plumbers Licensing Act on Malmstrom Air Force Base;  
PLUMBERS AND PLUMBING - Application of Montana Plumbers  
Licensing Act on Malmstrom Air Force Base;  
MONTANA CODE ANNOTATED - Sections 2-1-202, 37-69-324.

HELD: The Plumbers Licensing Act may be enforced on  
Malmstrom Air Force Base, as to non-federal enti-  
ties, so long as application of the state law does  
not interfere with the United States Government's  
use of the property for military purposes.

28 January 1980

Ed Carney, Director  
Department of Professional and  
Occupational Licensing  
42½ North Last Chance Gulch  
Lalonde Building  
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion concerning the following  
question:

Whether the Montana Plumbers Licensing Act may be  
enforced as to plumbing work done within the  
exterior boundaries of Malmstrom Air Force Base by  
civilian contractors or subcontractors or their  
employees.

Where the federal government obtains territory by purchase with the consent of the state pursuant to article I, section 8, paragraph 17 of the United States Constitution, the State may reserve concurrent jurisdiction over it, provided that the reserved jurisdiction is not inconsistent or in interference with the purpose for which the federal government acquired the property. James v. Dravo Contracting Co., 302 U.S. 134 146 (1937).

The United States purchased the land on which Malmstrom Air Force Base is located from private property owners. State ex rel. Parker v. District Court, 147 Mont. 151, 410 P.2d 459, 460 (1966). Since no Montana statute specifically grants this terrain to the federal government, the Montana Supreme Court found in State ex rel. Parker that the general session statute applies to this transfer. That statute, section 2-1-202, MCA, provides in pertinent part:

Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction ceded to the United States over and with respect to any lands within the limits of this state which shall be acquired by the complete purchase by the United States for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory....

In State v. Rindal, 146 Mont. 64, 404 P.2d 327 (1965), the Montana Supreme Court held that this statute reserved criminal jurisdiction over land purchased by the federal government to the State of Montana. This reservation of criminal jurisdiction by the State of Montana has been found to be consistent and not in interference with the operations for which the United States acquired the land on which Malmstrom Air Force Base is located. State ex rel. Parker, supra.

Violation of the Montana Plumbers Licensing Act is a misdemeanor. § 37-69-324, MCA.

THEREFORE, IT IS MY OPINION:

The Plumbers Licensing Act may be enforced on Malmstrom Air Force Base, as to non-federal entities, so long as application of the state law does not interfere with the United States Government's use of the property for military purposes.

Very truly yours,

MIKE GREELY  
Attorney General