

VOLUME NO. 38

OPINION NO. 75

COUNTIES - Statutory authority to establish joint self-insurance program;

INTERGOVERNMENTAL COOPERATION - Necessity of interlocal agreement to establish joint self-insurance program;

INSURANCE - Authority of counties to establish joint self-insurance program;

LOCAL GOVERNMENT - Necessity of interlocal agreement to establish joint self-insurance program;

MONTANA CODE ANNOTATED - Sections 1-2-105(3), 2-9-211, 7-11-104.

- HELD: 1. It is permissible for Montana counties to enter into a joint self-insurance program.
2. An interlocal agreement pursuant to section 7-11-104, MCA, is not the exclusive means by which counties might establish a joint self-insurance program.

17 April 1980

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion concerning certain aspects of a proposed joint self-insurance program for Montana counties. I have summarized and stated your questions as follows:

1. Is it permissible for Montana counties to enter into a joint self-insurance program?
2. If counties may enter into a joint self-insurance program, are they limited to providing such a program by means of an inter-local agreement pursuant to section 7-11-104, MCA?

Section 2-9-211, MCA, provides:

- (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.
- (2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.
- (3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

Subdivision 1 of this section is subject to two interpretations. It may be read as first authorizing political subdivisions to procure insurance separately or jointly and second as authorizing political subdivisions to use a deductible or self-insurance plan. When read in this way, there is no specific grant of authority to procure insurance jointly using a self-insurance plan. Alternatively, the statute may be read as authorizing political subdivisions to procure insurance jointly and use a self-insurance plan. This reading contains a specific grant of authority to counties to jointly self-insure. Two considerations lead me to conclude that the latter interpretation is correct.

First, while the remaining subsections, which address administrative details, refer to single political subdivisions, section 1-2-105(3), MCA, specifically provides in construing statutes:

The singular includes the plural and the plural includes the singular.

Second, two provisions of the 1972 Montana Constitution, which predates the enactment of section 2-9-211, MCA, support the latter interpretation of that statute. Art. XI, section 4(2) provides that the powers of counties are to be liberally construed. Article XI, section 7(1)(a), provides:

Unless prohibited by law or charter, a local government unit may (a) cooperate in the exercise of any function, power, or responsibility with... [one or more other local government units].

Read in light of these constitutional provisions section 2-9-211, MCA, authorizes Montana counties to enter into a joint self-insurance program.

Section 7-11-101, et seq., MCA, provides one vehicle, the interlocal agreement, by which counties could establish such a program. The basic question then becomes whether the interlocal agreement is the sole means by which the counties might establish a self-insurance program.

Nothing in the "Interlocal Cooperation Act" indicates that its provisions are intended to be the exclusive means by which political subdivisions may construct cooperative agreements. Moreover, section 2-9-211, MCA, contains no reference to the "Interlocal Cooperation Act." Had the Legislature intended to delimit the means by which the counties might provide such an insurance program, it could have included such a reference. In this case the lack of specific reference to the "Interlocal Cooperation Act" coupled with the constitutional provisions providing for liberal construction of county powers indicates that the counties may use means other than an interlocal agreement provided the method they ultimately select is not specifically prohibited by law.

THEREFORE, IT IS MY OPINION:

1. It is permissible for Montana counties to enter into a joint self-insurance program.
2. An interlocal agreement pursuant to section 7-11-104, MCA, is not the exclusive means by which counties might establish a joint self-insurance program.

Very truly yours,

MIKE GREELY
Attorney General