

VOLUME NO. 38

OPINION NO. 93

ALCOHOL - Alcohol intoxication as a crime or element of a crime not punishable under state law;

ALCOHOLIC BEVERAGES - Reasonable time, place, and manner restrictions on the use of alcoholic beverages in public places allowable under state law;

CITIES AND TOWNS - City and town ordinances may not punish public intoxication unless such ordinances fall within the statutory exceptions;

MONTANA CODE ANNOTATED - Sections 53-24-101, 53-24-102, 53-24-106, 53-24-107.

HELD: 1. The disorderly conduct and public drunkenness ordinances in Glasgow violate sections 53-24-106 and 53-24-107, MCA.

2. The open container ordinance in Glasgow is valid.

22 July 1980

James D. Rector, Esq.  
Glasgow City Attorney  
Glasgow, Montana 59230

Dear Mr. Rector:

You have requested my opinion concerning:

Whether certain Glasgow city ordinances pertaining to disorderly conduct, public drunkenness, and open containers are in conflict with sections 53-24-101, 102, 106, and 107, MCA.

The above mentioned sections are part of the chapter on Alcoholism and Drug Dependence. Section 53-24-102, MCA, sets forth the rationale behind the chapter.

It is the policy of the State of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subject to criminal prosecution because of their consumption of alcoholic beverages.... (Emphasis added.)

With that general policy set forth, the chapter sets out the following guidelines. Section 53-24-106, MCA, provides:

(1) No county, municipality, or other political subdivision may adopt or enforce a local law [or] ordinance...that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

Subsection (2) of this statute excepts certain conduct from the above proscription and allows regulation as to time, place, manner, and use of alcoholic beverages.

In addition, section 53-24-107, MCA, provides that:

A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition but may be detained by a peace officer for the person's own protection.

Evaluating the Glasgow ordinances under these sections it is clear that section 14-1.1(10)--Disorderly Conduct, and section 14-4--Public Drunkenness, are invalid. Section 14-1.1(10) provides:

(a) A person commits the offense of disorderly conduct if he knowingly disturbs the peace within the boundaries of the city of Glasgow by....

(10) Appearing in a public place in a state of visible intoxication as a result of the use of alcohol or any dangerous drug so as to create a risk to himself or others, or conducting himself in an offensive manner.

With regard to the reference in subsection (10) to alcohol intoxication, the ordinance is void under the state statutes cited above. In the same way, section 14-4 impermissibly punishes alcohol related offenses. That ordinance reads:

Every person who may be found drunk or intoxicated in any street or public place within the limits of the city, or, while in a drunken or intoxicated condition, intrudes upon any private premises against the assent of the owner or occupant thereof, or in such condition annoys or frightens any passerby upon the streets, alleys, or sidewalks, or in such condition may be found sleeping in any

public place without the assent of the owner or occupant thereof shall be deemed guilty of violating this code....

All of the violations contained within the above ordinances punish public intoxication, whether as an element of the offense, e.g., trespassing while intoxicated, or by itself, e.g., being drunk on a public street. They are, therefore, in contravention of the state statutes.

The third ordinance in question, the Open Container Law, Section 4-20, is valid. Subsection (2) of section 53-24-106, MCA, reads in part:

Nothing in this section affects any law, ordinance, resolution, or rule...regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times or places....

The open container ordinance in Glasgow relates specifically to the possession and use of alcoholic beverages in public places. The city is free to regulate that use. The ordinance provides in pertinent part:

Public drinking and public display and exhibitionism of beer or liquor...is hereby prohibited and it shall be unlawful for any person to engage in public drinking as herein defined within the limits of the city of Glasgow, Montana; and it shall be unlawful for any person to engage in public display of exhibitionism of beer or liquor as herein defined within the city limits of Glasgow, Montana.

Section 40-20(2), MCA, then, is a reasonable time, place and manner regulation as allowed by section 53-24-106(2), MCA.

THEREFORE, IT IS MY OPINION:

1. The disorderly conduct and public drunkenness ordinances in Glasgow violate sections 53-24-106 and 53-24-107, MCA.
2. The open container ordinance in Glasgow is valid.

Very truly yours,

MIKE GREELY  
Attorney General