

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 31

ALCOHOL - Provision by local government of alcohol and drug abuse services;
COAL BOARD - Eligibility for grant of local government drug and alcohol abuse proposal;
LOCAL GOVERNMENT - Power to provide alcohol and drug abuse services through contract with private agency;
MONTANA CODE ANNOTATED - Sections 7-1-111 to 7-1-114, Title 53, chapter 24, Title 90, chapter 6, part 2;
MONTANA CONSTITUTION - Article XI, § 6;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 22 (1978); 37 Op. Att'y Gen. No. 68 (1978); 37 Op. Att'y Gen. No. 89; 37 Op. Att'y Gen. No. 105 (1978);
REVISED CODES OF MONTANA - Sections 50-1806, 50-1807, 50-1809.

HELD: 1. Local government units with self-government powers and counties with general government powers are authorized to provide alcohol and drug abuse treatment services under Title 53, chapter 24, MCA.

OPINIONS OF THE ATTORNEY GENERAL

2. Local governments may contract with nonprofit corporations for the provision of such services.
3. A program of alcohol and drug abuse treatment services provided by contract with a private nonprofit corporation is a "governmental service or facility" under section 90-6-205(4), MCA, for the purpose of determining eligibility for coal impact assistance.

1 September 1981

Herschel M. Robbins, Chairman
Montana Coal Board
Department of Commerce
Capitol Station
Helena, Montana 59620

Dear Mr. Robbins:

You have requested my opinion regarding the eligibility for coal board grants of certain local government proposals to provide social assistance for persons with alcohol and drug abuse problems.

Your letter informs me that the City of Billings and Yellowstone County have proposed to purchase and renovate a building for the use of the Rimrock Foundation, a nonprofit corporation providing treatment for alcohol and drug-related problems. The City proposes to issue industrial revenue bonds to fund a portion of the project, and the county has sought a \$600,000 grant from the Montana Coal Board to provide the remainder of the required funds. Under the proposal, title to the building would remain in the City of Billings until retirement of the industrial revenue bonds at which time the title would vest in the Rimrock Foundation. You inquire whether this proposal makes the county eligible for coal impact assistance under Title 90, chapter 6, part 2, MCA.

Your first question is whether the building in question is a "governmental facility" under the provisions of section 90-6-205, MCA, which provides in part:

OPINIONS OF THE ATTORNEY GENERAL

The board may:

...

(4) award grants, subject to 90-6-207...to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development.

You suggest that since, under the plan, title to the building will vest in a private corporation, the building is not a "governmental facility" and the proposal is therefore not eligible for coal impact aid under Title 90, chapter 6, part 2, MCA. This approach begs the question, since eligibility for assistance under section 90-6-205, MCA, does not turn on whether title to the building remains in a governmental entity. The statute authorizes grants to aid in provision of "governmental services and facilities." In 37 Op. Att'y Gen. No. 22 (1977), I held that the terms "government services," "governmental services and facilities," and "public services," all of which appear in Title 90, chapter 6, part 2, are interchangeable and that they refer to "those services and facilities which are provided by or through a governmental unit in exercise of powers granted such unit by the Legislature." 37 Op. Att'y Gen. at 99. I therefore conclude that if this proposal is a legitimate exercise of express or implied local government power, the fact that the project includes transfer of a building or facility from governmental to private ownership does not in itself render the project ineligible for coal impact assistance.

This inquiry is closely connected to your second question--whether a county or city has the power to expend funds for the purchase of a building, title to which will eventually vest in a private corporation. As a general matter, a county has the power to grant funds to a nonprofit private corporation if the grant is supported by consideration, typically in the form of an obligation on the part of the corporation to perform some service for the local government. If the arrangement is supported by such consideration, it makes no difference that the funds provided by the county are

OPINIONS OF THE ATTORNEY GENERAL

used to purchase a building for the nonprofit corporation. I examined this question in 37 Op. Att'y Gen. No. 105 (1978), in the context of expenditure of revenue sharing funds, and much of that analysis is pertinent here. As noted in that opinion:

A determination concerning the authority of a county to enter into a particular contract typically involves two inquiries. First, does the county have the power to provide the service which the non-profit organization will obligate itself to perform? Second, is a contract with a non-profit organization a reasonable and appropriate means of providing that service?

Id. at 446.

The question of whether a particular service may be performed depends, in the first instance, on the nature of the local government unit. Units with self-government powers have all powers not specifically excluded, Mont. Const. art XI, § 6, see 37 Op. Att'y Gen. No. 68 (1977), while general power local governments have only those powers granted specifically by statute or necessarily implied. Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1947); 37 Op. Att'y Gen. No. 89 (1977). The City of Billings is a charter self-government. Since the power to furnish care and treatment for persons with alcohol and drug-related problems is not specifically excluded, see § 7-1-111 and 7-1-114, MCA, the City has the power to provide such services. Yellowstone County, on the other hand, possesses only general government powers. It is therefore necessary to examine the statutory powers of county governments to determine whether the county has the express or implied power to provide alcohol and drug abuse treatment.

The general statutes dealing with county government grant counties few explicit responsibilities in the social services area. 37 Op. Att'y Gen. at 447-48. However, the statutes dealing with treatment of alcoholism, and drug dependence, Title 53, ch. 24, MCA, give the counties particular responsibilities. Section 53-24-202, MCA, requires local government units to cooperate with the State Department of Institutions in providing treatment for alcohol and drug-related

OPINIONS OF THE ATTORNEY GENERAL

problems. The Department is authorized to provide funds to counties for treatment programs, and to rural counties to form multi-county districts for such programs. §§ 53-24-204(2)(d), (h), 53-24-206(3)(b), MCA. Finally, section 53-24-211, MCA, requires the counties to submit a "comprehensive county-wide plan for the treatment, rehabilitation, and prevention of alcoholism," which must contain information regarding "existing non-profit and local government programs within the county." (Emphasis added.) 37 Op. Att'y Gen. No. 105 (1978) held that counties have implied power to contract with nonprofit organizations to provide youth guidance and counseling and other child welfare services. This conclusion was based on the statutes requiring the counties to share responsibility with the Department of Social and Rehabilitation Services for provision of such programs. Title 53, ch. 24, MCA, similarly requires the counties to share the responsibility for treatment of alcohol and drug-related problems. I therefore conclude that such treatment is a legitimate service which may be provided by counties with general government powers.

The remaining question is whether the proposal in question here--a contract with a nonprofit corporation under which the county and city will furnish funds for a building in exchange for the provision of alcoholism treatment services--is a legitimate means of providing the services. As noted in 37 Op. Att'y Gen. No. 105, this is rarely a difficult question. Since no method of performance is required by statute the county has the discretion to select any reasonable method. The Montana Supreme Court has held that a contract with a private concern is permissible when no county official is specifically required to perform the contracted services. Arnold v. Custer County, 83 Mont. 130, 146-47, 269 P. 396 (1978). The contract in question here certainly is reasonable.

It is important for you to note the limited scope of this opinion. Your question is whether Yellowstone County is eligible, as a matter of law, for coal impact assistance under the proposal here in question. My conclusion that the County is eligible expresses no opinion whatsoever on the merits of the proposal. "Discretion to select from among applications lies with the board, which may, within the limitations prescribed by sections 50-1806, 50-1807 and 50-1809, R.C.M. 1947

OPINIONS OF THE ATTORNEY GENERAL

[now codified at 90-6-205 through 90-6-209, MCA], determine priorities among competing grants." 37 Op. Att'y Gen. at 100. The Board must determine in the final analysis whether the proposal merits favorable consideration.

THEREFORE, IT IS MY OPINION:

1. Local government units with self-government powers and counties with general government powers are authorized to provide alcohol and drug abuse treatment services under Title 53, ch. 24, MCA.
2. Local governments may contract with nonprofit corporations for the provision of such services.
3. A program of alcohol and drug abuse treatment services provided by contract with a private nonprofit corporation is a "governmental service or facility" under section 90-6-205(4), MCA, for the purpose of determining eligibility for coal impact assistance.

Very truly yours,

MIKE GREELY
Attorney General