

COUNTIES - General powers, lack of explicit or implicit statutory power to administer community development block grant program;

COUNTIES - General powers, lack of inherent power to administer community development block grant program;

COUNTY HOUSING AUTHORITY - Implicit power to administer community development block grant program;

INTERGOVERNMENTAL COOPERATION - Interlocal agreement between city and county unavailable to empower county to administer community development block grant program;

INTERGOVERNMENTAL COOPERATION - Interlocal agreement between municipal housing authority and county may empower county to administer community development block grant program within ten miles of city limits;

LOCAL GOVERNMENT - Powers of general power local governments under Montana Constitution;

MUNICIPAL HOUSING AUTHORITY - Interlocal agreement conferring power on county to administer community development block grant program within ten miles of city limits;

MONTANA CODE ANNOTATED - Title 7, chapter 15, parts 21, 44, 45; Sections 7-11-103, 7-11-104, 7-15-2101, 7-15-2112, 7-15-2122, 7-15-4102, 7-15-4103, 7-15-4413;

MONTANA CONSTITUTION - Article XI, sections 4, 5, 6;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 4 (1981), 39 Op. Att'y Gen. No. 37 (1981).

- HELD:
1. A county with general government powers has no inherent authority to administer a program for the rehabilitation of privately owned housing funded under the CDBG program.
  2. A county housing authority has implicit statutory power to administer the CDBG project for the rehabilitation of privately owned housing, and a general power county government may therefore administer the CDBG program through a county housing authority.
  3. A county with general government powers and a city generally may not enter into an interlocal agreement under which the county could administer the CDBG project for the rehabilitation of privately owned housing.
  4. If the city has created a municipal housing authority, the municipal housing authority and the county may enter an interlocal agreement under which the county may administer the CDBG project for the rehabilitation of privately owned housing within ten miles of the city limits.

2 August 1983

Richard M. Weddle  
Department of Commerce  
1424 Ninth Avenue  
Helena MT 59620

Dear Mr. Weddle:

You have requested my opinion on the following questions:

1. Does a county not having self-government powers have the authority to administer a federally-funded grant program for the

rehabilitation of substandard privately owned residences?

2. If not, may such a county administer such a program through either a county housing authority or an interlocal agreement with a municipality?

Your letter informs me that the Department of Commerce administers the federal "Small Cities" Community Development Block Grant (CDBG) program. Under the program, local government units may compete for federal funds to be used to rehabilitate substandard housing units owned and occupied by low and moderate income families. "Municipal corporations," i.e., cities and towns, are explicitly authorized to finance the rehabilitation of privately owned dwellings under sections 7-15-4102 and 7-15-4103, MCA. No similar explicit authorization extends such powers to county governments. Your first question is whether a general power county government has the inherent power to provide such service in the absence of an explicit statutory grant of authority.

Montana's 1972 Constitution effected a fundamental change in the law pertaining to local governments. Prior to 1972, it was settled law that a county possessed "only such powers as are conferred on it by the Constitution and statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are required for performance of duties imposed on it by law," and that "[a]ny reasonable doubt concerning the existence of a power should be resolved against a county's exercise of that power." See DeLong v. Downes, 175 Mont. 152, 155, 573 P.2d 160, 162 (1977), overruled in dictum, Tipco Corp. v. City of Billings, 39 St. Rptr. 600, 603, 642 P.2d 1074, 1077 (1982). Article XI of the 1972 Constitution altered these principles in two significant ways. First, article XI, sections 5 and 6 allowed local government units to adopt charters providing self-government powers. Under such a charter, the local government unit is authorized to exercise "any power not prohibited by constitution, law, or charter." Mont. Const. art. XI, § 6. Beyond this fundamental change in the extent of local government power, the new constitution altered the manner in which courts evaluate the extent of those powers by requiring that "[t]he

powers of incorporated cities and towns and counties shall be liberally construed." Mont. Const. art. XI, § 4(2). The new rule of construction stated in article XI, section 4(2) does not of its own force confer new powers on local governments. Rather, it simply reverses the presumption which applied under prior law. Under the rule stated in DeLong, all reasonable doubts were resolved against the existence of local government power. Under article XI, section 4(2) reasonable doubts must be resolved in favor of the existence of the power.

Missoula County has not adopted a self-government charter, and it therefore may exercise only the "legislative, administrative, and other powers provided or implied by law." Mont. Const. art. XI, § 4(1)(b). The initial analysis under this provision is identical to that required by pre-1972 law; the question is whether the Legislature has expressly or implicitly authorized the county to exercise the power in question. I reject the suggestion that general power county governments possess inherent power to provide any kind of services, since the constitution expressly limits county general powers to those provided by the Legislature or constitution. Recognition of "inherent" powers of general power county governments would effectively obliterate the distinction between general powers and self-government powers, a result which is obviously inconsistent with article XI of the Montana Constitution. The fact that the CDBG program may be beneficial to Missoula County does not confer on the county the power to administer the program. If the county has such power, its source must be found in some statutory provision explicitly or implicitly authorizing the county to act.

My research discloses no statutes expressly conferring on general power county governments the power to finance the rehabilitation of privately owned buildings. Cf. §§ 7-15-4102, 7-15-4103, MCA (allowing a "municipal corporation" to "finance the rehabilitation of ... unsanitary or unsafe privately owned dwelling accommodations." However, county governments are not without power to act in the area of housing. Section 7-15-2101, MCA, recognizes that substandard housing exists in rural as well as urban areas in this state. Title 7, chapter 15, part 21, MCA, authorizes counties to establish a county housing authority to deal with these problems. In addition to the specific powers

enumerated in this part, section 7-15-2112(2), MCA, allows county housing authorities to exercise any power conferred on municipal housing authorities by Title 7, chapter 15, parts 44 and 45, MCA. These provisions must be examined to determine whether they implicitly authorize a housing authority to administer a CDBG program.

Section 7-15-2101, MCA, recognizes the existence of substandard housing in rural areas and provides that "the clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired." (Emphasis added.) While housing authorities generally fulfill their roles through the acquisition of property to be converted into housing projects owned and operated by the housing authority, see, e.g., § 7-15-2122, MCA, this is not the exclusive method by which they may operate. In 39 Op. Att'y Gen. No. 4 (1981), I recognized that a municipal housing authority could administer a federal "section 8" rent supplement program even though it did not involve the acquisition and operation of a "housing project," reasoning that the federal program provided safe and sanitary dwellings for persons of low income and therefore was sufficiently related to the duties of a housing authority. A similar rationale applies here. The renovation of substandard housing occupied by "low or moderate income families" certainly contributes to the eradication of the unsafe or unsanitary housing identified in section 7-15-2101, MCA, as the target of the county housing authority. While the failure explicitly to empower the authority to operate this program, as cities are authorized to do under sections 7-15-4102 and 7-15-4103, MCA, suggests that the Legislature did not intend to confer the power, I am obligated by article XI, section 4(2) of the Montana Constitution to resolve reasonable doubts in favor of the existence of the power. Since I believe it is reasonably within the ambit of a county housing authority's responsibility to administer a CDBG project for the rehabilitation of privately owned housing, I conclude that a county housing authority is implicitly granted the power to do so.

Your final question is whether a county may acquire the authority to administer this program by entering into an interlocal agreement with a city. I assume for purposes of this question that the county has no housing authority. In such case, neither the county nor the city is authorized to administer the program outside the city limits. The city's authority under sections 7-15-4102 and 7-15-4103, MCA, is limited to financing the rehabilitation of unsanitary or unsafe private dwellings "within the limits of the city or town." Section 7-11-104, MCA, allows "public agencies," which include cities and counties, to contract for the performance of "any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized to perform." In this case the service to be performed under the proposed agreement--the administration of the CDBG grant program outside the city limits--is one which neither the city nor the county alone is statutorily authorized to perform. The city and the county may not enter an interlocal agreement to provide a service which neither was authorized to provide alone.

The result is somewhat different, however, if the city has created a municipal housing authority under Title 7, chapter 15, part 44, MCA. The reasoning which produced the conclusion that a county housing authority may participate in the CDBG program applies with equal force to municipal housing authorities. The jurisdictional area of municipal housing authorities extends ten miles beyond the city limits, § 7-15-4413, MCA, see 39 Op. Att'y Gen. No. 4 (1981), and the municipal housing authority could therefore administer the CDBG program within that area. Since a municipal housing authority is a "public agency" under section 7-11-103, MCA, 39 Op. Att'y Gen. No. 37 (1981), the municipal housing authority could contract to have the county perform this service within the ten-mile area under section 7-11-104, MCA.

THEREFORE, IT IS MY OPINION:

1. A county with general government powers has no inherent authority to administer a program for the rehabilitation of privately owned housing funded under the CDBG program.

2. A county housing authority has implicit statutory power to administer the CDBG project for the rehabilitation of privately owned housing, and a general power county government may therefore administer the CDBG program through a county housing authority.
3. A county with general government powers and a city generally may not enter into an interlocal agreement under which the county could administer the CDBG project for the rehabilitation of privately owned housing.
4. If the city has created a municipal housing authority, the municipal housing authority and the county may enter an interlocal agreement under which the county may administer the CDBG project for the rehabilitation of privately owned housing within ten miles of the city limits.

Very truly yours,

MIKE GREELY  
Attorney General