

VOLUME NO. 40

OPINION NO. 31

CITIES AND TOWNS - A city with general government powers has no authority to establish a civil penalty and collection system for parking offenses;

STATUTES - Penal statutes must be strictly construed;  
MONTANA CODE ANNOTATED - Sections 7-1-4124, 7-5-4207, 61-12-101;

MONTANA CONSTITUTION - Article II, sections 22, 28; article XI, section 4.

HELD: A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses.

18 January 1984

Jim Nugent  
Missoula City Attorney  
201 West Spruce Street  
Missoula MT 59802

Dear Mr. Nugent:

You have requested my opinion on the following question:

May a city with general government powers establish a civil penalty and collection system for motor vehicle parking offenses?

The system you propose would include a review board to hear appeals of parking offense citations prior to the municipality's actually filing suit in court for collection of outstanding fines. You also inquire whether, assuming the establishment of such a system is permissible, it may include escalating fine provisions, as well as a requirement that court costs be awarded to the city if a lawsuit is necessary for collection of unpaid fines.

Your request for an opinion arose as a result of the Montana Supreme Court's holding in City of Missoula v. Shea, 40 St. Rptr. 91, 661 P.2d 410 (1983). The Court held that the escalating fine provisions in Missoula's parking ordinances, which increased the fine for failure to make payment within the time limits prescribed, violated article II, section 28 of the Montana Constitution. That section provides, in pertinent part:

Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation....

The Court noted, however, that "such a scheme [escalating fine provisions] may be acceptable in enforcing civil penalties." Shea, 40 St. Rptr. at 99, 661 P.2d at 416.

You indicate in your letter that Missoula does not have self-government powers. Article XI, section 4 of the Montana Constitution provides that cities without

self-government powers have only those powers expressly granted or necessarily implied by law. There is no express statutory authority for establishment by a city of a civil penalty and collection system for parking offenses. Section 7-1-4124(1), MCA, states that a municipality with general powers may, subject to the provisions of state law, enact ordinances and resolutions. Section 61-12-101(1), MCA, permits local authorities to regulate the standing or parking of vehicles. Section 7-5-4207, MCA, provides:

The city or town council has power to impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed \$500 and no imprisonment may exceed 6 months for any one offense.

Article II, section 22 of the Montana Constitution prohibits the imposition of "excessive fines." The section is identical to article III, section 20 of the 1889 Montana Constitution. In a case construing that provision of the 1889 Constitution the Court noted that "[a] fine, in the sense in which the term is used in the Constitution, is a penalty exacted by the state for some criminal offense." Daily v. Marshall, 47 Mont. 377, 399, 133 P. 681, 687 (1913). A "penalty" has been defined as "a sum of money which the law exacts the payment of by way of punishment for doing some act which is prohibited, or the omission to do some act which is required to be done." Hidden Hollow Ranch v. Collins, 146 Mont. 321, 326, 406 P.2d 365, 368 (1965). Section 7-5-4207, MCA, is the only express legislative authority that I have found for imposition of a fine or penalty by a city as punishment for a parking offense. In your letter, you note that the statute does not expressly refer to civil or criminal fines and penalties. Therefore, in your view, imposition of a civil fine or penalty would be consistent with the provisions of the statute. I cannot agree with you. Section 7-5-4207, MCA, is clearly penal in nature. See State Department of Livestock v. Sand Hills Beef, Inc., 196 Mont. 77, 639 P.2d 480 (1981). Penalties are not favored, and statutes which permit assessment of penalties must be strictly construed, and may not be extended by construction. Shipman v. Todd, 131 Mont. 365, 368, 310 P.2d 300, 302 (1957).

The intent of the Legislature governs the interpretation of a statute. Furthermore, its intent must, if possible, be ascertained from the plain meaning of the words used. Haker v. Southwestern Railway Company, 176 Mont. 364, 578 P.2d 724 (1978). The obvious intent of the Legislature in enacting section 7-5-4207, MCA, was to empower a municipality to impose a fine or imprisonment as punishment for the violation of an ordinance. The role of a court in construing a statute is simply to ascertain and declare its substance, and not to insert what has been omitted. Chennault v. Sager, 37 St. Rptr. 857, 610 P.2d 173 (1980). If the Legislature had intended to provide that a fine for violation of a municipal ordinance could be recovered in a civil action, it must be presumed that it would have put express language to that effect in the statute. No such language appears in section 7-5-4207, MCA. Fundamental rules of statutory construction, and the requirement that penal statutes must be strictly construed, compel me to conclude that a municipality with general government powers may not establish a civil penalty and collection system for parking ordinance violations, such as the one you have proposed. I express no opinion here on the authority of self-governing cities to do so.

This conclusion makes it unnecessary for me to answer your related questions concerning escalating fine provisions and court costs.

THEREFORE, IT IS MY OPINION:

A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses.

Very truly yours,

MIKE GREELY  
Attorney General