

CITIES AND TOWNS - Authority to enforce handicapped parking privilege on private property;

CITIES AND TOWNS - Necessity of ordinance to implement enforcement powers concerning handicapped parking privilege;

CITIES AND TOWNS - Request by private property owner for establishment of reserved spaces for handicapped persons;

PHYSICALLY HANDICAPPED - Special parking privilege;

POLICE - Enforcement powers concerning handicapped parking privilege;

MONTANA CODE ANNOTATED - Sections 45-2-101(36), 49-4-301, 49-4-302, 49-4-307;

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 42 (1977);

SESSION LAWS OF 1983 - House Bill 232.

- HELD: 1. Under section 49-4-302, MCA, a request by a private property owner for establishment of special parking spaces reserved for handicapped persons on private property available for public use should be made to the governing body of the local government unit.
2. A city has authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use, and such enforcement does not depend upon enactment of local implementing ordinances.

17 February 1984

David Gliko
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Dear Mr. Gliko:

You have requested my opinion concerning questions which I have phrased as follows:

1. Under section 49-4-302, MCA, to whom should a private property owner submit a request for establishment of special parking spaces reserved for handicapped persons on private property available for public use?
2. Does a city have authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use? If so, must the city enact an ordinance to implement such enforcement powers?

The 1983 Legislature passed House Bill 232, which broadened the special parking privileges of handicapped persons. Section 49-4-301, MCA, directs the Division of Motor Vehicles, Department of Justice, to issue special parking permits to persons with permanent or temporary physical handicaps. Amended section 49-4-302(1), MCA, provides:

The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use. [Emphasis added.]

Your first question requires an interpretation of the emphasized language quoted above. The fundamental rule of all statutory construction is that the intent of the Legislature controls. To ascertain that intent, it is necessary to examine the language employed and the purpose to be served by the statute. State ex rel. Krona v. Holmes, 114 Mont. 372, 136 P.2d 220 (1943). The meaning of the phrase "upon the request of the private property owner" is unclear, since the statute does not specify to whom the request must be made. When there is doubt about the meaning of a phrase in a statute, the history of the statute may be considered to ascertain the intent of the Legislature. State v. State Board of Equalization, 93 Mont. 19, 17 P.2d 68 (1933). In committee hearings on House Bill 232, the bill's

sponsor noted that the local governing body would designate areas for establishment of parking spaces reserved for handicapped persons. Additional comments by legislators considering the bill indicate an intent to place control over implementation of the statutory provisions concerning the handicapped parking privilege in local officials. Subsection (3) of section 49-4-302, MCA, permits the governing body of a city, town, or county to exempt vehicles displaying a handicapped parking permit from the normal time limitations imposed on vehicles parked on public streets. Again, this manifests an intent by the Legislature to place control over implementation of the handicapped parking privilege in local officials. A statute must be considered in its entirety, and a phrase of doubtful meaning must be given a construction which will enable it to be harmonized with the whole statute. McClanathan v. Smith, 37 St. Rptr. 113, 606 P.2d 507 (1980). Consideration of all these factors leads me to conclude that the Legislature intended a request by a private property owner to be made to the governing body of the local government unit, which would include a county, city, or town.

Your second question concerns the authority of cities to enforce the statutory prohibition in section 49-4-302(2), MCA, which provides:

No vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

The tone of your letter indicates your main concern to be whether city police officers are authorized to enforce the new law on "private property available for public use," e.g., parking lots.

Section 49-4-307, MCA, establishes a penalty for violation of the statute: "A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of not less than \$10 or more than \$100." The Legislature has declared a violation of the statute to be a misdemeanor. It is therefore a violation of the state criminal law. See § 45-2-101(36), MCA; State ex rel. Streit v. Justice

Court, 45 Mont. 375, 381, 123 P. 405, 406 (1912). The Montana Supreme Court has recognized that municipal police officers, as peace officers, are obligated to enforce the State's laws within their territorial jurisdiction. Andrieux v. City of Butte, 44 Mont. 557, 560, 121 P. 291, 292 (1912); State ex rel. Quintin v. Edwards, 38 Mont. 250, 265-66, 99 P. 940, 944-45 (1909). Section 49-4-302(2), MCA, expressly includes reserved parking spaces located on private property within the proscription established by the statute. City police officers may therefore enforce the new laws on private property, such as parking lots, as well as on public streets, within their territorial jurisdiction.

You also inquire whether a city ordinance is required to implement such enforcement powers. A city ordinance, the object of which would be to implement enforcement powers which already exist as noted above, would be redundant and unnecessary. See generally 37 Op. Att'y Gen. No. 42 (1977).

THEREFORE, IT IS MY OPINION:

1. Under section 49-4-302, MCA, a request by a private property owner for establishment of special parking spaces reserved for handicapped persons on private property available for public use should be made to the governing body of the local government unit.
2. A city has authority to enforce the prohibition in section 49-4-302(2), MCA, on private property available for public use, and such enforcement does not depend upon enactment of local implementing ordinances.

Very truly yours,

MIKE GREELY
Attorney General