

ALCOHOLIC BEVERAGES - Authority of local governments to require beer distributors to keep records of the sales or distribution of beer kegs;

BEER - Distributors, registration of beer kegs;

CITIES - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;

COUNTIES - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;

LOCAL GOVERNMENT - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;

MONTANA CODE ANNOTATED - Section 16-1-102.

HELD: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county.

19 April 1984

W. G. Gilbert, III
Beaverhead County Attorney
Beaverhead County Courthouse
Dillon MT 59725

Dear Mr. Gilbert:

You have asked my opinion on the following question:

Whether the City of Dillon and/or Beaverhead County have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county and imposing criminal penalties for the failure to do so.

Section 16-1-102, MCA, says in pertinent part:

It is hereby declared to be the policy of the state of Montana that the manufacture,

transportation, distribution, sale, and possession of "beer", as that term is defined in this code and which contains not more than 7% of alcohol by weight, shall be controlled and regulated as provided under this code.

Your question is on all points analogous to the question addressed by the Montana Supreme Court in State ex rel. City of Libby v. Haswell, 147 Mont. 492, 414 P.2d 652 (1966). In that case, the City of Libby sought to regulate by local ordinance the sale of beer to minors. However, the Supreme Court ruled that by enacting what is now section 16-1-102, MCA, the Legislature had reserved to the State the entire control of the manufacture, sale, and distribution of beer. Since local governments have only those powers granted by the Legislature, in passing Montana's alcoholic beverage control laws, the Legislature has not given local governments power in the area of regulation of alcoholic beverages. "The legislature thus has made it clear that the state has preempted the field with respect to the control of the sale of beer and liquor." 147 Mont. at 496. The Supreme Court continued: "We hold, then, that the cities do not have authority or jurisdiction to enact ordinances dealing with control of sales of liquor, and that Judge Haswell was correct in his ruling on the demurrer." 147 Mont. at 498. The type of regulation being considered by the City of Dillon and Beaverhead County is the same as the regulation enacted by the City of Libby in that neither action is authorized by statute. The Montana statute has reserved to the State the sole control of beer distribution; the only way this situation could be changed is by legislative enactment.

THEREFORE, IT IS MY OPINION:

In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county.

Very truly yours,

MIKE GREELY
Attorney General