

COUNTIES - Modification of statutorily established speed limits;

COUNTY COMMISSIONERS - Authority to enact ordinances;

COUNTY COMMISSIONERS - Modification of statutorily established speed limits;

ORDINANCES - Authority of board of county commissioners to enact ordinances;

TRAFFIC - Modification of statutorily established speed limits by board of county commissioners;

MONTANA CODE ANNOTATED - Sections 7-3-401, 7-3-414, 7-3-417, 7-3-431, 7-3-442, 7-5-109, 61-1-306, 61-8-103, 61-8-303, 61-8-310, 61-8-711, 61-12-101;

MONTANA CONSTITUTION - Article XI, section 4.

HELD: A board of county commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with section 61-8-310, MCA. It may further adopt traffic ordinances to the extent permitted under section 61-12-101(14), MCA, and any such ordinances may include penalty provisions.

8 May 1984

Jack Yardley  
Deputy Park County Attorney  
Park County Courthouse  
Livingston MT 59047

Dear Mr. Yardley:

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

May a board of county commissioners put speed restrictions on certain county roads and impose a penalty for violation thereof?

The involved board of county commissioners is constituted in a commission form of government, as defined in section 7-3-401, MCA.

Sections 61-8-103 and 61-12-101, MCA, establish the general scope of the power of "local authorities" to enact and enforce ordinances, rules, or regulations concerning traffic matters. The term "local authorities" is defined in section 61-1-306, MCA, and includes boards of county commissioners. Section 61-8-103, MCA, states:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

Section 61-12-101, MCA, amplifies section 61-8-103, MCA, and expressly provides that local authorities may, "with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power," regulate various aspects of traffic control, including "altering the speed limits as authorized herein" (§ 61-12-101(10), MCA), and "enacting as ordinances any and all provisions of chapter 8 or chapter 9 [of Title 61], and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in

conflict with state law or federal regulations and to enforce the same within their jurisdiction." § 61-12-101(14), MCA (emphasis added).

Section 61-8-303, MCA, contains the basic speed restrictions for urban districts, highways under construction or repair, and all other locations. However, section 61-8-310, MCA, in part grants local authorities the power to alter speed limits under specified circumstances:

(1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime; or

(c) decreases the limit outside an urban district, but not to less than 35 miles per hour.

(2) A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

A speed limit adopted in accordance with the above becomes effective "when appropriate signs giving notice of the altered limit are erected upon the highway." § 61-8-310(3), MCA. Only federal-aid highways or their extensions are excepted from operation of section 61-8-310, MCA. See § 61-8-310(4), MCA. Once a local authority complies with section 61-8-310, MCA, in modifying and posting the altered limit, violation of that limit constitutes violation of section 61-8-303,

MCA. The penalty for such violation is specified in section 61-8-711, MCA.

As stated above, section 61-12-101(14), MCA, permits local authorities to adopt by ordinance substantive portions of the motor vehicle statute. Section 61-12-101(14), MCA, was enacted during the 1959 legislative session, and the title of that act read:

An Act to Amend Section 32-2131, Revised Codes of Montana, 1947, Relating to the Jurisdiction of Municipalities Over Violations Occurring Within the Limits of Municipalities, Allowing the Municipalities to Adopt as Ordinances All Acts Not in Conflict With State Law, Repealing All Acts in Conflict Herewith and Providing That This Act Be Effective From and After its Passage and Approval. [Emphasis added.]

The Legislature thus used the term "ordinance" with the intent of granting only those entities, which then possessed legislative or ordinance-enacting authority, the power to adopt provisions of the motor vehicle statute. See generally Board of County Commissioners v. Lamoreaux, 168 Mont. 102, 105, 540 P.2d 975, 976-77 (1975) (title of Act may be examined to determine legislative intent). Counties had, in contrast, traditionally been held as possessing administrative powers but not legislative authority. See Hersey v. Neilson, 47 Mont. 132, 143-44, 131 P. 30, 32 (1913); State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 274, 47 P.2d 624, 628-29 (1935); see also Bacus v. Lake County, 138 Mont. 69, 78-79, 354 P.2d 1056, 1061 (1960); Plath v. Hi-Ball Contractors, 139 Mont. 263, 268-69, 362 P.2d 1021, 1023-24 (1961).

The 1972 Montana Constitutional Convention, however, adopted substantial changes in permissible local government structures and powers. See Mont. Const. art. XI, §§ 1 to 6; see generally Tipco Corporation v. City of Billings, 39 St. Rptr. 600, 603, 642 P.2d 1074, 1077 (1982); Stevens v. City of Missoula, 40 St. Rptr. 1267, 1270-71, 667 P.2d 440, 443-44 (1983). Article XI, section 4(1)(b) of the Montana Constitution specifically provides that general government power counties have "legislative, administrative, and such other powers as provided or implied by law," and article XI, section 4(2) of the Montana Constitution, requires the

powers of counties to be liberally construed. The Local Government Committee report to the Constitutional Convention, accompanying its proposed amendments, explained the reasoning behind the provisions eventually incorporated without material change into article XI, section 4(1)(b):

Through stringent court interpretations ... Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns.

....

The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.

The committee's overriding concern is that Montana counties, through the officials elected locally, be allowed to meet the increasing challenges of a rapidly changing state. Allowing the legislature to give counties legislative power will provide another tool in coping with the urban sprawl outside incorporated municipalities and in eliminating some of the present reasons feeding the growth of overlapping governmental jurisdictions and special districts.

II Montana Constitutional Convention at 793-94. It is, therefore, indisputable that article XI, section 4(1)(b) was designed to eliminate any constitutional bar to the grant of legislative, or ordinance-enacting, authority to counties possessing only general governmental powers.



As required by article XI, section 4 of the 1972 Montana Constitution, the Legislature significantly restructured the permissible range of local government structures following the constitutional convention. Sections 7-3-401 to 444, MCA, govern the commission form of government. Section 7-3-401, MCA, states that "[a]ll legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission," while other sections relating to the commission form of government explicitly recognize the authority of the commission to adopt ordinances to determine various aspects of county governments. (Emphasis added.) See §§ 7-3-414, 7-3-417, 7-3-431 to 442, MCA. While the commission form of government is available to municipalities and counties, no statutory distinction is drawn between the nature of the underlying political subdivision and its authority.

I conclude, on the basis of article XI, section 4 of the Montana Constitution, and subsequent legislative action, that counties constituted in the commission form of government have legislative, or ordinance-enacting, authority as to those matters committed to their governmental discretion by the Legislature. Because the term "local authorities," as defined in section 61-1-306, MCA, and used in section 61-12-101, MCA, includes counties and because counties constituted in a commission form of government have ordinance-enacting power as to matters over which the Legislature has given them legislative authority, such counties may adopt through ordinance all or a portion of chapters 8 and 9 of Title 61 pursuant to section 61-12-101(14), MCA. They may further impose penalties for violation of any provisions so adopted. Your inquiry did not indicate whether the board wishes to modify the penalties imposed under section 61-8-711, MCA, for speeding violations, and I do not determine whether modification of the statutory penalty would render that portion of the ordinance in conflict with section 61-8-711, MCA. See, e.g., City of Toledo v. Best, 172 Ohio St. 371, 176 N.E.2d 520, 522 (1961); Township of Chester v. Panicucci, 62 N.J. 94, 299 A.2d 385, 390 (1972); Village of Mount Prospect v. Malouf, 103 Ill. App. 2d 88, 243 N.E.2d 434, 436 (1968); Kalita v. City of Detroit, 57 Mich. App. 696, 226 N.W.2d 699, 703 (1975); City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868, 870

(1973); see generally E. McQuillan, The Law of Municipal Corporations § 17.15 (3d ed. 1981). I would, however, note that section 7-5-109, MCA, imposes a limit on penalties assessable under ordinances; that limit is consistent with the maximum ordinance penalty permitted under section 61-8-711(2), MCA.

THEREFORE, IT IS MY OPINION:

A board of county commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with section 61-8-310, MCA. It may further adopt traffic ordinances to the extent permitted under section 61-12-101(14), MCA, and any such ordinances may include penalty provisions.

Very truly yours,

MIKE GREELY  
Attorney General