

VOLUME NO. 41

OPINION NO. 20

ALCOHOLIC BEVERAGES - Delinquent fee schedule for local alcohol licenses;

CITIES AND TOWNS - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;
FEES - Delinquent fee schedule for local alcohol licenses;
LICENSES - Delinquent fee schedule for local alcohol licenses;
LOCAL GOVERNMENT - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;
MUNICIPAL CORPORATIONS - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;
MUNICIPAL GOVERNMENT - City may not charge late renewal fee for local alcohol license if city already charges the maximum fee allowed under state law;
MONTANA CODE ANNOTATED - Sections 16-4-501, 16-4-501(10), 16-4-503;
MONTANA CONSTITUTION - Article XI, sections 4(1)(a), 4(2);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 75 (1984).

HELD: The City of Missoula does not have authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

12 July 1985

Jim Nugent
Missoula City Attorney
201 West Spruce Street
Missoula MT 59801

Dear Mr. Nugent:

You have requested my opinion on the following question:

Whether the City of Missoula has authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

An incorporated city with general government powers, such as Missoula, has all powers that are provided or implied by law. Mont. Const. art. XI, § 4(1)(a). Further, the powers of a local government with general government powers shall be liberally construed. Mont.

Const. art. XI, § 4(2); Stevens v. City of Missoula, ___ Mont. ___, 667 P.2d 440, 443 (1983).

I have previously issued an opinion holding that a Lewistown city ordinance which allows an escalating monthly penalty for failure to obtain a city business license is valid. 40 Op. Att'y Gen. No. 75 (1984). Thus, an escalating fee for late payment of city license fees is proper in some situations.

However, Montana law contains specific statutes regarding alcohol license fees. Section 16-4-501, MCA, sets forth the alcohol license fees payable to the State Department of Revenue and, at section 16-4-501(10), MCA, specifically provides for a late fee as follows:

In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

Specific authority for local alcohol licensing is provided in section 16-4-503, MCA, which states:

The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to five-eighths of the fee for an all-beverages license or 100% of the fee for a beer or beer-and-wine license collected by the department from such licensee under this code.

This section expressly authorizes the city to fix license fees not to exceed certain sums. You have informed me that the City of Missoula currently charges the maximum fee allowed under section 16-4-503, MCA. The statute expressly limits the maximum fee amount chargeable by local governments and provides no power to assess a higher fee under any circumstances. In this case, where the city already charges the maximum fee

allowed, an additional late renewal fee added to the license fee would be inconsistent with section 16-4-503, MCA, and, consequently, would be invalid.

THEREFORE, IT IS MY OPINION:

The City of Missoula does not have authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses.

Very truly yours,

MIKE GREELY
Attorney General