

VOLUME NO. 41

OPINION NO. 47

CITIES AND TOWNS - Mandatory seat belt ordinance;
FINES - Mandatory seat belt ordinance;
LOCAL GOVERNMENT - Mandatory seat belt ordinance;
MOTOR VEHICLES - Mandatory seat belt ordinance;
MUNICIPAL GOVERNMENT - Mandatory seat belt ordinance;
SENTENCE - Mandatory seat belt ordinance;
TRAFFIC - Mandatory seat belt ordinance;
MONTANA CODE ANNOTATED - Sections 7-1-101, 7-1-106,
7-5-4207, 61-9-409, 61-9-410, 61-9-420, 61-9-516,
61-12-101;
MONTANA CONSTITUTION - Article XI, section 6.

HELD: The City of Helena may enact a mandatory seat belt ordinance which provides for a fine and/or a jail sentence for violation of the ordinance, as long as the fine or penalty does

not exceed \$500 and the imprisonment does not exceed six months for any one offense.

14 February 1986

Jeffrey M. Sherlock
Helena City Attorney
316 North Park
Helena MT 59623

Dear Mr. Sherlock:

You have requested my opinion on the following question:

Whether or not the City of Helena may enact a mandatory seat belt ordinance which provides for fines and/or jail sentences as penalties for violations.

The City of Helena is a municipality with self-governing powers. Article XI, section 6 of the Montana Constitution provides in part:

A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter.

See also § 7-1-101, MCA. The powers and authority of a local government unit with self-government powers are to be liberally construed, and every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority. § 7-1-106, MCA. Thus, the City of Helena has the authority to enact a mandatory seat belt ordinance within its jurisdiction if such an ordinance is not prohibited by the Montana Constitution, Montana law, or the charter of the City of Helena.

I find no provision in the Montana Constitution which would prohibit enactment of a mandatory seat belt ordinance, and you have informed me that the charter of the City of Helena contains no such prohibition.

Nor does state law prohibit enactment of a seat belt ordinance. Section 61-12-101, MCA, provides in pertinent part:

The provisions of chapter 8 and chapter 9 [of Title 61] shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

....

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 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.

A mandatory seat belt ordinance would not conflict with state law. The Montana Code Annotated contains references to seat belts, but only section 61-9-420, MCA, contains any reference to mandatory seat belt use. See §§ 61-9-409, 61-9-410, 61-9-420, 61-9-516, MCA. Section 61-9-420, MCA, pertains to the mandatory use of child restraint systems or safety belts on young children and would not conflict with a mandatory seat belt ordinance. I have located no federal regulations which would conflict with a mandatory seat belt ordinance.

Further, enactment of a mandatory seat belt ordinance would be a reasonable exercise of the police power of the City of Helena. The mandatory seat belt law of the State of New York was challenged as exceeding the permissible scope of the state's police power in People v. Weber, 494 N.Y.S.2d 960 (Town Ct. 1985). The court held the mandatory seat belt law of New York was a proper exercise of the state's police power, stating:

The [police] power is governed by "the rule of reason." That is, it extends to any reasonable rule or regulation designed to promote or protect the public's health, safety or morals.

In determining what is "reasonable" in any particular case, it is incumbent on the Court to weigh the burden imposed by the restrictions against the public benefits

derived therefrom. In virtually all cases, fastening a seat belt can hardly be termed burdensome at all, particularly when practiced with a regularity that makes it a habit. The benefits flowing from the use of seat belts may well be vast. This is indicated by the statistics cited in the Attorney General's brief and excerpted in Appendix A [omitted from publication] to this Opinion. The use of safety belts may well be an important and vital step toward the solution of a national problem of huge dimensions. Accordingly, in weighing of "costs" against "accomplishments" this State's seat belt law must be, and is found by this Court to constitute, a reasonable and constitutional exercise of the State's police power.

494 N.Y.S.2d at 962. See also City of Albuquerque v. Jones, 535 P.2d 1337 (N.M. 1975) (ordinance requiring operators of motorcycles to wear safety helmets appropriate exercise of city's police power).

I conclude the City of Helena may enact a mandatory seat belt ordinance. As to the possible penalties for violations, section 7-5-4207, MCA, authorizes cities to impose fines and penalties for the violation of any city ordinance, but provides that no fine or penalty may exceed \$500 and no imprisonment may exceed six months for any one offense.

THEREFORE, IT IS MY OPINION:

The City of Helena may enact a mandatory seat belt ordinance which provides for a fine and/or jail sentence for violation of the ordinance, as long as the fine or penalty does not exceed \$500 and the imprisonment does not exceed six months for any one offense.

Very truly yours,

MIKE GREELY
Attorney General