

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 107

CONTRACTS - Whether joint ventures are eligible for "resident" status in bidding on public works contracts;

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PUBLIC FUNDS - Whether joint ventures are eligible for "resident" status in bidding on public works contracts; MONTANA CODE ANNOTATED - Sections 18-1-102, 18-1-103.

HELD: A joint venture may qualify for "resident" status as a "partnership enterprise" for purposes of the preference under section 18-1-102, MCA, but a majority of the venture's partners must have been Montana residents for at least one year immediately prior to the involved bidding to acquire such status.

17 August 1988

Gary J. Wicks, Director
Montana Department of Highways
2701 Prospect
Helena MT 59620

Dear Mr. Wicks:

You have requested my opinion concerning the following question:

Is a joint venture composed of two members--one a Montana resident and the second a nonresident--entitled to the preference for resident bidders created under section 18-1-102, MCA, with respect to state-issued contracts for the construction or repair of public works?

I conclude that, while joint ventures are eligible to qualify under section 18-1-103, MCA, for the bidder preference, a majority of its members must be Montana residents, a condition not satisfied in the facts presented by your question.

Section 18-1-102(1), MCA, provides that any public agency in this state must award contracts for the construction or repair of public works to the lowest responsible resident bidder if such person's bid does not exceed that of the lowest responsible nonresident bidder by 3 percent. The term "resident" is defined in section 18-1-103, MCA, which requires in subsection (2) that, "[i]n a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than 1 year immediately prior to bidding" to qualify for "resident" status. Other subsections specify standards for an individual or a corporation

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seeking to qualify as a "resident." § 18-1-103(1), MCA. Joint ventures are not mentioned. It should be noted that special rules apply to bidders on contracts for the purchase of goods, both as to the amount of the preference and as to the conditions precedent to acquiring "resident" status, and are not at issue here.

Despite the absence of an express inclusion of joint ventures under section 18-1-103, MCA, as a business entity capable of qualifying for "resident" status, there is no indication in such provision that arbitrary distinctions were intended to be drawn between various forms of legitimate business entities. That provision should instead be construed to carry out its clear purpose of establishing rules for determining "resident" status for any type of recognized business organization. See, e.g., Montana Wildlife Federation v. Sager, 37 St. Rptr. 1897, 1907, 620 P.2d 1189, 1199 (1980) ("[a] statute will not be interpreted to defeat its evident object or purpose").

In Montana and elsewhere, a joint venture has been viewed as "a quasi-partnership in a single adventure undertaken for mutual gain." Bradbury v. Nagelhus, 132 Mont. 417, 426, 319 P.2d 503, 509 (1957); accord Murphy v. Redland, 178 Mont. 296, 303, 583 P.2d 1049, 1053 (1978); Rae v. Cameron, 112 Mont. 159, 167-68, 114 P.2d 1060, 1064 (1941); see generally 46 Am Jur. 2d Joint Ventures § 4 (1969) (discussing relationship between joint ventures and partnerships). The term "partnership enterprise" in section 18-1-103(2), MCA, obviously admits of an interpretation which extends not only to traditional partnerships but also to joint ventures which share many characteristics of partnerships. See Bender v. Bender, 144 Mont. 470, 480, 397 P.2d 957, 962 (1965). This interpretation is especially warranted because the term "partnership enterprise" logically encompasses all arrangements, including joint ventures, which have partners.

Even though a joint venture may qualify for "resident" status under section 18-1-102, MCA, as a "partnership enterprise," section 18-1-103(2), MCA, requires that a majority of its partners must have been residents of Montana for more than one year immediately prior to the bidding. Here, however, at most only one of the partners in the joint venture satisfies that residency requirement. The joint venture accordingly does not qualify for "resident" status.

THEREFORE, IT IS MY OPINION:

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A joint venture may qualify for "resident" status as a "partnership enterprise" for purposes of the preference under section 18-1-102, MCA, but a majority of the venture's partners must have been Montana residents for at least one year immediately prior to the involved bidding to acquire such status.

Very truly yours,

MIKE GREELY
Attorney General