

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 111

COUNTIES - Lack of authority of county with general powers to implement employee safety incentive bonus program;

COUNTY COMMISSIONERS - Lack of authority of county with general powers to implement employee safety incentive bonus program;

COUNTY OFFICERS AND EMPLOYEES - Lack of authority of county with general powers to implement employee safety incentive bonus program;

EMPLOYEES, PUBLIC - Lack of authority of county with general powers to implement employee safety incentive bonus program;

MONTANA CODE ANNOTATED - Section 7-5-2101;

MONTANA CONSTITUTION - Article XI, sections 4(1)(b), 6;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 17 (1983), 37 Op. Att'y Gen. No. 105 (1978).

HELD: A county with general government powers, such as Teton County, has no inherent authority within its statutory system to implement an employee incentive award program whereby

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county employees are paid bonuses for maintaining accident-free periods in their departments.

21 September 1988

Russell R. Andrews  
Teton County Attorney  
Teton County Courthouse  
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion on the following question:

Does section 7-5-2101, MCA (the statute setting out the general authority of county commissioners), grant county commissioners the authority to implement a program which pays bonuses to county employees for maintaining accident-free periods in their departments?

You have explained that Teton County's government has chosen to retain general powers rather than to adopt a self-government charter. This fact is important because of the nature of the authority of those entities under the Montana Constitution.

Under the Constitution, local governments have the option of adopting a self-government charter or retaining general government powers. If a local government adopts a charter, then it may exercise any power not prohibited by the Constitution, its law or charter; hence, it has, in effect, the authority to share powers with the state government. Mont. Const. art. XI, § 6. If a local government chooses to retain general government powers, the local government has only the powers given to it by the Legislature. D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 80, 713 P.2d 977, 982 (1986); 40 Op. Att'y Gen. No. 17 at 63 (1983). This distinction is central to your request because Teton County has not adopted a self-government charter. Hence, it may only exercise "legislative, administrative, and other powers provided or implied by law." Mont. Const. art XI, § 4(1)(b).

The focus of your request shifts, because of the above analysis, to ask whether the Legislature expressly or implicitly authorizes safety incentive bonus programs in its grant of general government powers. Title 7, chapter 4, part 25, MCA, addresses the compensation of

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local government employees. There is no mention in these statutes of any authority to grant employee bonuses. Although there is no express authority in Montana law for such bonuses, there is a general grant of authority in section 7-5-2101, MCA, which states:

(1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government. [Emphasis added.]

In the context of governmental powers, the word necessary means "reasonable and appropriate" or "reasonably well adopted to the accomplishment" of governmental duties or powers. 37 Op. Att'y Gen. No. 105 at 441, 445 (1978). While there is little guidance on this subject, it is my opinion that the power to grant employee bonuses may not be inferred from this general grant of authority.

Because my research discloses no statutes conferring either express or implied authority to establish employee incentive awards programs, I conclude that Teton County has no authority to implement an employee incentive award program. See 40 Op. Att'y Gen. No. 17 at 66. If the Teton County commissioners are interested in pursuing the idea, the proper course would be to seek legislative authorization. This opinion does not address the situation where an employee incentive program is part of a collective bargaining agreement.

THEREFORE, IT IS MY OPINION:

A county with general government powers, such as Teton County, has no inherent authority within its statutory system to implement an employee incentive award program whereby county employees are paid bonuses for maintaining accident-free periods in their departments.

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Very truly yours,

MIKE GREELY  
Attorney General