

VOLUME NO. 43

OPINION NO. 16

CITIES AND TOWNS - Authority of city to reduce office hours for city offices;
OFFICES - Authority of city to reduce office hours for city offices;
MONTANA CODE ANNOTATED - Sections 1-1-101, 1-1-102, 1-2-107, 7-1-105,
7-1-114(1)(f), 7-1-4121, 7-4-102;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 120
(1988), 34 Op. Att'y Gen. No. 27 (1971).

HELD: The phrase "unless otherwise provided by law," as used in section 7-1-102, MCA, does not authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open.

May 24, 1989

William A. Schreiber
Belgrade City Attorney
P.O. Box 268
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Dear Mr. Schreiber:

You have requested my opinion on the following question:

Does the phrase "unless otherwise provided by law," as used in section 7-4-102, MCA, authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open?

Section 7-4-102, MCA, states:

Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, except county and city treasurers, who in their discretion may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

Your letter of inquiry informs me that the city is considering various alternatives in an effort to save money and come to grips with a shortfall in the city's budget. One alternative would be to reduce the city office hours by opening later or closing earlier than section 7-4-102, MCA, provides. The city manager has asked whether municipal ordinances are included within the meaning of the word "law" in section 7-4-102, MCA, so that a city could enact an ordinance reducing the statutorily prescribed office hours for city officers.

The Montana Supreme Court has not directly addressed your question. Cf. Silver Bow County v. Davies, 40 Mont. 418, 107 P. 81 (1910); Broadwater v. Kendig, 80 Mont. 515, 261 P. 264 (1927); State ex. rel. Burns v. Lacklen, 129 Mont. 243, 284 P.2d 998 (1955). Nor has this office previously issued an opinion addressing the question. Cf. 34 Op. Att'y Gen. No. 27 at 166 (1971). I am aware that the term "law" is sometimes used "in a generic sense, as meaning the rules of action or conduct duly prescribed by controlling authority, and having binding legal force; including valid municipal ordinances as well as statutes." United States Fidelity & Guaranty Company v. Guenther, 281 U.S. 34, 37 (1930); State ex rel. Marquette v. Police Court of City of Deer Lodge, 86 Mont. 297, 283 P. 430 (1929). See 62 C.J.S. Municipal

Corporations § 411 at 785 (1949). However, I conclude on the basis of settled statutory construction principles that the word "law" as used in section 7-4-102, MCA, does not include municipal ordinances.

The phrase "unless otherwise prescribed by law" has been part of the statute establishing government office hours since its original enactment in 1895. Although the office hours required by the statute have changed over the years as the result of several amendments, this introductory exception to the statute's application has been retained by the Legislature throughout the statute's history. In answering your question, therefore, I am guided by the Legislature's understanding of the word "law" as expressed in Montana's Political Code of 1895 and subsequent enactments.

Section 1-1-101, MCA, which was enacted in the Political Code of 1895 and has since remained unchanged, defines "law" as "a solemn expression of the will of the supreme power of the state." Section 1-1-102, MCA, which was also retained from the 1895 code, provides that the will of the supreme power "is expressed by: (1) the constitution; [and] (2) statutes." Ordinances are not included in this statutory definition of "law."

The term "law" also is defined in section 7-1-4121, MCA, enacted in 1979, which contains definitions for terms used in certain provisions relating generally to municipalities. Subsection (8) defines "law" as "a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures." Subsection (12) separately defines "ordinance" as "an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government." Again the Legislature's definition of "law" does not include municipal ordinances.

As a matter of general statutory construction, the statutory definitions of "law" in section 1-1-101, 1-1-102, and 7-1-4121(8), MCA, are applicable wherever the word "law" occurs in the code, except where a contrary intention plainly appears. § 1-2-107, MCA. See, e.g., Mountain View Education Association v. Mountain View School, 44 St. Rptr. 1089, 738 P.2d 1288 (1987); State ex rel. Department of Health v. Lasorte, 182 Mont. 267, 596 P.2d 477 (1979). Clearly no such contrary intention appears in section 7-4-102, MCA.

The result reached by application of these statutory construction principles is consistent with the scope of the city's legislative authority under state law. The City of Belgrade has self-government powers, pursuant to Article XI, section 6 of the Montana Constitution and the city's charter. See 42 Op. Att'y Gen. No. 120 (1988). State statutes are applicable to local governments with self-government powers until superseded by an ordinance or resolution; however, the authority to enact such ordinances or resolutions is subject to the limitations of Title 7, chapter 1, part 1, MCA. § 7-1-105, MCA. Section 7-1-114(1)(f), MCA, provides that a local government with self-government

powers is subject to "[a]ny law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service." Under subsection (2) of the statute, this provision is a prohibition on the self-government unit acting other than as provided by the state law.

Section 7-4-102, MCA, is a law which directs city officers to carry out a function and provide a service by keeping their offices open for the transaction of business during certain hours. It is my opinion that section 7-1-114(1)(f), MCA, applies to prohibit the city from reducing its office hours beyond those required by section 7-4-102, MCA.

By enacting section 7-4-102, MCA, the Legislature has deemed government office hours to be a matter of statewide concern and has effectively preempted local governments from the field. In view of the statutory definitions of "law" and the limitations imposed by statute upon the city's legislative powers, I conclude that Belgrade does not have authority to reduce the city office hours by ordinance. While I understand and appreciate the city's need to cut expenses, I find that the Legislature has imposed an affirmative duty upon local officials to maintain the office hours set forth in section 7-4-102, MCA; consequently, only the Legislature can relieve the officers of this duty.

THEREFORE, IT IS MY OPINION:

The phrase "unless otherwise provided by law," as used in section 7-4-102, MCA, does not authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open.

Sincerely,

MARC RACICOT
Attorney General