

VOLUME NO. 43

OPINION NO. 22

CITIES AND TOWNS - Extraterritorial zoning authority;  
 COUNTIES - Extraterritorial zoning authority of municipalities;  
 LAND USE - Extraterritorial zoning authority of municipalities;  
 MUNICIPAL CORPORATIONS - Extraterritorial zoning authority;  
 MONTANA CODE ANNOTATED - Sections 7-1-4111, 76-1-601 to 76-1-606,  
 76-2-310, 76-2-311.

HELD: In the absence of applicable county zoning regulations, section 76-2-310, MCA, authorizes a city of the first class which has adopted a master plan to extend its zoning regulations extraterritorially within a three-mile radius of its corporate limits without reference to county boundary lines.

June 27, 1989

David Hull  
 Helena City Attorney  
 City-County Administration Building  
 315 North Park  
 Helena MT 59623

Dear Mr. Hull:

You have requested my opinion concerning the following question:

Does section 76-2-310, MCA, authorize a city of the first class to extend its zoning regulations not more than three miles beyond its corporate limits even if such extension includes territory within a county different from that where the city is located?

I conclude that, in the absence of county zoning regulations applicable to the territory within the proposed extension, the grant of extraterritorial authority to cities under section 76-2-310, MCA, is unaffected by county boundary lines.

The city of Helena is a city of the first class as defined in section 7-1-4111(1), MCA. Its corporate limits lie wholly within Lewis and Clark County but are within three miles of Jefferson County. Your opinion request was prompted by the city's possible use of its extraterritorial zoning authority under section 76-2-310, MCA, to regulate property that extends into Jefferson County. Section 76-2-310, MCA, states in relevant part:

(1) The local city or town council or other legislative body which has adopted a master plan pursuant to [§§ 76-1-601 to 606, MCA] may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any

direction but not in a county which has adopted such regulations within the contemplated area.

(2)(a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

See also § 76-2-311(1), MCA (where municipal extraterritorial zoning power exercised, a city may enforce its zoning regulations "until the county board adopts a master plan pursuant to [§§ 76-1-601 to 606, MCA] and accompanying zoning or subdivision resolutions, or both, which include the area"); Little v. Board of County Commissioners, 38 St. Rptr. 1124, 1127, 631 P.2d 1282, 1285 (1981) (adoption of county zoning regulations precludes city from using extraterritorial power).

The city of Helena has adopted a master plan in accordance with sections 76-1-601 to 606, MCA, and neither Lewis and Clark County nor Jefferson County had zoning regulations in the area where the city proposed to zone extraterritorially at the time your request was submitted. Jefferson County has subsequently adopted zoning regulations for the area in that county, but I have nonetheless determined to issue an opinion since the question presented may arise in the future.

It is settled that a municipality's zoning power is restricted to its corporate limits unless extraterritorial application is constitutionally or statutorily permitted. 1A C. Antieau, Municipal Corporation Law § 7.58 (1987). The purpose underlying a grant of extraterritorial zoning authority "is to enable cities to plan for the orderly development of their adjacent fringe areas." 8 McQuillin Municipal Corporations § 25.85 (3d ed. 1983) (footnote omitted); see, e.g., Village of Lake Bluff v. Jacobson, 118 Ill. App. 3d 102, 73 Ill. Dec. 637, 454 N.E.2d 734, 739 (1983) ("[t]he most reasonable reading of the statute [authorizing municipalities to apply development plan regulations within their corporate limits and contiguous territory not more than one and one-half miles beyond such limits] seems to be that the statute gives municipalities the right to exercise their police power over extraterritorial developments in the same way that they exercise that power over developments within their territory, in recognition that a municipality's concerns do not end at its borders"). This purpose presumably conforms with the grant of extraterritorial powers under section 76-2-310, MCA, since the degree of such authority directly relates to city population and contains implicit legislative recognition that larger cities will typically have broader fringe areas of population which affect municipal interests.

In construing statutory provisions, "the intention of the legislature controls" and that intention "must first be determined from the plain meaning of the words used." Missoula County v. American Asphalt, Inc., 216 Mont. 423, 426, 701 P.2d 990, 992 (1985). If the involved provision is unambiguous, neither a court nor I may "insert what has been omitted or omit what has been inserted." Reese v. Reese, 196 Mont. 101, 104, 637 P.2d 1183, 1185 (1981); accord Chennault v. Sager, 187 Mont. 455, 461-62, 610 P.2d 173, 176 (1980) ("[t]he role of a court in construing a statute is simply to ascertain and declare its substance and not insert what has been omitted"). Unless clearly required by the language used, moreover, statutes "may not be interpreted to defeat their object or purpose, and the object sought to be achieved by the legislature is of prime consideration in interpreting them." Montana Talc Company v. Cyprus Mines Corporation, 44 St. Rptr. 2161, 2166-67, 748 P.2d 444, 449 (1987); accord Johnson v. Marias River Electric Cooperative, 211 Mont. 518, 524, 687 P.2d 668, 671 (1984) ("[a]ll statutory construction by courts is an attempt to search out the will of the legislature"). These general rules of statutory construction, when applied to the unambiguous terms of section 76-2-310, MCA, and its manifest purpose, compel the conclusion that the extraterritorial zoning authority accorded cities may be used as to any lands within the statutory limits where no county zoning regulations have been implemented.

First, the thrust of section 76-2-310(1) and (2)(a), MCA, is quite clear: In the absence of county zoning regulation in the contemplated area, a city with a master plan may exert extraterritorial zoning authority within prescribed limits. This extraterritorial power is not restricted by this statute to the county in which the city is located. To imply a prohibition against extension of such power beyond the county in which a city is located would thus engraft onto the statute a limitation incompatible with its otherwise straightforward language. A literal construction of section 76-2-310, MCA, also does not conflict with any other statutory provision.

Second, even were section 76-2-310, MCA, less than clear, limiting a city's extraterritorial zoning authority to its county would undercut the very purpose of that authority. Urban development and the attendant consequences do not respect county lines, and there exists no reason to impute to the Legislature an intent to circumscribe a municipality's ability to respond to those consequences simply because of an intervening county boundary.

THEREFORE, IT IS MY OPINION:

In the absence of applicable county zoning regulations, section 76-2-310, MCA, authorizes a city of the first class which has adopted a master plan to extend its zoning regulations extraterritorially within a three-mile radius of its corporate limits without reference to county boundary lines.

Sincerely,

MARC RACICOT  
Attorney General