

VOLUME NO. 44

OPINION NO. 17

COUNTIES - Smoking policy in county courthouse;
HEALTH - Smoking policy in county courthouse;
PUBLIC BUILDINGS - Smoking policy in county courthouse;
MONTANA CODE ANNOTATED - Sections 50-40-103, 50-40-201.

HELD: In a county building in which at least seven employees work, the managers or supervisors of the work areas, pursuant to section 50-40-201, MCA, may agree to designate one smoking area in the building with the remainder of the building designated as nonsmoking.

Bob Slomski
Sanders County Attorney
P.O. Box 519
Thompson Falls MT 59873

August 5, 1991

Dear Mr. Slomski:

You have requested an opinion on the following question:

Does section 50-40-201, MCA, of the Montana Clean Indoor Air Act preclude a board of county commissioners from designating the entire courthouse as a nonsmoking area, where there is no single office or work area in the courthouse which has seven or more employees?

Section 50-40-201, MCA, addresses the adoption of a smoking policy in a courthouse. The language of the statute, as amended in the 1991 legislative session by the adoption of House Bill 860, requires that both nonsmoking and smoking areas be provided in local government buildings where at least seven employees are employed. The statute, in pertinent part, provides:

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. In offices and work areas in buildings maintained by a political subdivision ... in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

As mentioned above, section 50-40-201, MCA, was recently amended in the 1991 legislative session by the adoption of House Bill 860, which removed state buildings from the statute. The smoking policy for state buildings is now addressed by a separate statute which prohibits smoking in specifically enumerated areas and requires at least one designated smoking area within each state building.

You have questioned whether the seven-employee threshold, which triggers application of section 50-40-201, MCA, relates to the number of employees in individual offices and work areas within county buildings, or to the buildings where the offices and work areas are located. Section 50-40-201, MCA, essentially states that in buildings maintained by a political subdivision in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work areas within that building shall arrange nonsmoking and smoking areas in a convenient location. The language of the statute itself suggests that the seven-employee threshold applies to the building. The minutes of the legislative committees which discussed adoption of the statute in 1985 do not refute this interpretation. Therefore, it is my

opinion that the seven-employee threshold applies to the building rather than to the office or work area that is located in the building.

Assuming that there are at least seven employees working in the Sanders County Courthouse, section 50-40-201, MCA, would require that the "manager or person in charge of the work area" arrange nonsmoking and smoking areas in convenient areas. A work area is not defined in section 50-40-201, MCA. However, the more generally applicable provisions of the Montana Clean Indoor Air Act refer to areas or rooms rather than to buildings. See § 50-40-103(2) and (7), MCA. Although, as your letter suggests, the county commissioners have *general* management responsibilities over county property (see, e.g., § 7-5-2101, MCA), the statute refers to persons in charge of work areas rather than to governing bodies. Thus, in the context of the Clean Indoor Air Act those county officers or employees who supervise particular offices should be considered the managers of their work areas. The county commissioners would have the authority to determine the smoking arrangements for their own office(s) as well as for common areas, such as hallways and lounges.

With respect to your specific question, nothing in section 50-40-201, MCA, would prevent the county commissioners and the several managers of the work areas in the county courthouse from reaching an agreement concerning the designation of the entire courthouse as "smoke-free" except for at least one convenient smoking area.

THEREFORE, IT IS MY OPINION:

In a county building in which at least seven employees work, the managers or supervisors of the work areas, pursuant to section 50-40-201, MCA, may agree to designate one smoking area in the building with the remainder of the building designated as nonsmoking.

Sincerely,

MARC RACICOT
Attorney General