NATURE OF SELF-GOVERNMENT IN MONTANA
CONSTITUTION OF MONTANA -- ARTICLE XI – LOCAL GOVERNMENT

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Title 7. Local Government
Chapter 1. General Provisions
Part 1. Nature of Self-Government Local Government

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.

Attorney General's Opinions

Competitive Bidding Requirements Mandatory: A local government unit with self-government powers cannot supersede by the passage of a resolution or ordinance the competitive bidding requirements set forth in 7-5-4302. 37 A.G. Op. 175 (1978).

Self-Government Powers: Section 7-4-2503 does not apply to self-government units since it may be superseded by ordinance or resolution of the Commission and is not prohibited by 7-1-114(1)(g). 37 A.G. Op. 68 (1977).

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.

Case Notes

Recorded Waiver of Annexation Protest by Prior Property Owner — Present Owner Precluded From Protesting Annexation: In 1966, the city of Whitefish adopted a policy that a landowner outside the city

boundary had to agree to waive the right to protest future annexation in order to continue to receive city water and sewer services. The waivers were properly recorded and later used by the city to invalidate annexation protests by current landowners in 1998. The District Court concluded that the waivers constituted a covenant running with the land and that the current owners were precluded from protesting the proposed annexation. On appeal, the current owners argued that the right to protest in 7-2-4710 resided with the current property owner and that the statutory consent to annexation authorized by 7-13-4314 applied only to the initiation of services and could not transfer to subsequent purchasers. The Supreme Court disagreed. Under 7-1-113, a self-governing entity may act even when there are controlling state laws as long as the local government's actions are not inconsistent with or lower or less stringent than state requirements. The purpose of 7-13-4314 is to ensure that property owners outside a municipality can request utility services and to ensure that the local government can later require annexation in exchange for utilities. Creating a covenant that runs with the land furthers this purpose. In addition, 70-17-203 also provides that every covenant made for the direct benefit of the property runs with the land. The waivers directly benefited the property and were allowable, so the District Court was affirmed. Gregg v. Whitefish City Council, 2004 MT 262, 323 M 109, 99 P3d 151 (2004). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981).

City Gross Revenue Franchise Fee on Facilities Using Public Right-of-Way Illegal Tax on Goods and Services: The city of Billings by ordinance established a franchise fee on several public utilities and telecommunications corporations with facilities located in the public right-of-way, and the utilities challenged the fee. The District Court held that the fee constituted an unlawful tax, and the city appealed. Despite the fact that the ordinance was subsequently rejected by voters, rendering the issue moot, the Supreme Court noted that the issue was capable of repetition and therefore accepted jurisdiction of the issue as appropriate in order to finally settle the legality of such fees in case similar ordinances were brought forth in the future. The fee in question was characterized as a franchise fee based on 4% of gross annual revenue generated by each utility that occupied the public right-of-way within the city. However, money collected was not earmarked for right-of-way maintenance or regulation, but was to be used to reduce general property taxes and to fund transportation improvement projects, public safety operations, and park maintenance, and the fee was separate from the city's police power over streets and alleys. The Supreme Court agreed that the unilaterally imposed, revenue-generating gross revenue fee, which was unrelated to the use or occupancy of the right-of-way, was in fact a tax based exclusively on the sale of a product or service within the city and was thus prohibited pursuant to 7-1-112. Mont.-Dak. Util. Co. v. Billings, 2003 MT 332, 318 M 407, 80 P3d 1247 (2003), distinguishing State ex rel. Malott v. Bd. of County Comm'rs, 89 M 37, 296 P 1 (1930). See also St. Louis v. W. Union Tel. Co., 148 US 92 (1893), W. Union Tel. Co. v. New Hope, 187 US 419 (1903), and Postal Tel.-Cable Co. v. Taylor, 192 US 64 (1904).

Local Development Code Regulating Sale of Alcoholic Beverages Not Preempted by State: Montana's statutory framework for the regulation of alcohol clearly contemplates that cities will impose local zoning that regulates the sale of alcohol. The development code of the city of Red Lodge, a self-governing city, being consistent with and stricter than the state's regulations, was not preempted by state law. Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998), overruling State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966).

System Development Fees Allowable Form of Financing Future Expansion of City Water and Sewer System: When liberally construed, it is within the power of a self-governing municipality, as well as a reasonable extension of a city's express statutory authority, to implement the collection and accumulation of system development fees to fund a portion of the cost of future expansion of municipal water and sewer systems. The fees are proper as long as they are based on reasonably anticipated future costs of the city and the revenue generated from the fees is used solely to fund facility expansion or to pay for bonds sold for that purpose. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Independent Exercise of Eminent Domain Power by Joint Airport Board Member: Plaintiffs argued that 67-10-205(2)(c) mandates that a proceeding for eminent domain may not be brought by a single municipal member of a joint airport board but rather only as a joint action with the other signatories. The Supreme Court found this to be an overly narrow interpretation in light of other statutory authority in Title 67, ch. 10, parts 1 and 2, which empowers municipalities to act either jointly or independently, and under the broad grant of power to cities under Art. XI, sec. 4, Mont. Const. By its terms, 67-10-205(2)(c) requires joint action when an eminent domain proceeding is brought pursuant to the authority of the joint airport board; however, it does not preclude action separate and apart from the board. Lake v. Lake County, 233 M 126, 759 P2d 161, 45 St. Rep. 1354 (1988).

City Ordinance Requiring Developer Surcharge — Valid Exercise of Self-Governing Power: A city ordinance imposing a 5% surcharge on developers of raw land prior to creation of a special improvement district was a valid exercise of the city's self-governing powers. Diefenderfer v. Billings, 223 M 487, 726 P2d 1362, 43 St. Rep. 1934 (1986).

Limitation on Self-Governing Powers: The city of Billings, a self-governing city, adopted an ordinance purporting to supersede all but two sections in Title 7, ch. 33, part 41, relating to municipal fire departments. The firefighters challenged the ordinance. The District Court held that the ordinance was a permissible exercise of a self-government power. On appeal, the Supreme Court held that under the shared sovereignty concept contained in the Montana Constitution, local governments with self-governing powers are limited only by express prohibitions in the constitution, state statute, or the local government charter itself. By statute, a local government may not establish standards or requirements lower or less stringent than those imposed by state law. The court held that because the ordinance did not contain standards governing several areas it purported to supersede, the ordinance provisions were lower or less stringent than the statutory provisions and therefore invalid. A local government must provide any service required by state law. State law requires every city to have a fire department. Pursuant to Art. XI, sec. 5(3), Mont. Const., the only statutory provisions a self-governing charter may control over are those establishing executive, legislative, and administrative structure and organization. The ordinance was invalid. Billings Firefighters Local 521 v. Billings, 214 M 481, 694 P2d 1335, 42 St. Rep. 112 (1985), followed in Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999). Billings Firefighters Local 521 II was followed, as to the power of a consolidated local government CEO to fire government employees not being considered a part of the structure and organization of a self-governing local government, in Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005), granting partial summary judgment.

Exercise of Power Under Self-Government Charter Not Limited: A county government operating under a self-government charter which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of such service or performance of that function except to the extent of such limitations as are found in its charter or in state law specifically applicable to self-government units. Thus, where a county government is not limited by its charter concerning whether it can charge a fee for review by the county-appointed land surveyor and where there is no state statute specifically forbidding self-government units from assessing a fee for the review of certificates of survey, the county's prescribed fee is valid. The county in prescribing such a fee is merely exercising a legislative power that as a self-governing unit it shares with the state. State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100, 38 St. Rep. 71 (1981).

Attorney General's Opinions

Municipal Tiered Resort Tax Allowed: Resort tax statutes neither prohibit nor explicitly permit a differential tax schedule. However, a differential tax structure is not inconsistent with concerns revealed in the legislative history and may arguably further the express statutory purposes by taxing at a higher rate those

businesses drawing more of their customers from tourists than those businesses serving a greater proportion of local residents. Therefore, a municipality with self-governing powers may establish a tiered resort tax schedule providing different tax rates for similar goods or services according to the character of the business in which the goods or services are offered, as long as none of the tax rates exceed 3%. 48 A.G. Op. 25 (2000).

Enactment of Local Government Ordinance Providing That Delinquent Solid Waste Service Charges Become Lien on Property Served: A city-county charter that provided that levies for special services were the obligation of the property owners was not in conflict with state constitutional powers delegated to local governments or with state law governing local governments, nor was it inconsistent with state provisions in an area affirmatively subjected to state control. Therefore, a local government with self-governing powers may enact an ordinance that provides that delinquent solid waste management service charges become a lien on the property served, consistent with the remedy available to a solid waste management district for collecting its delinquent service charges under 7-13-233 (now repealed). 44 A.G. Op. 34 (1992).

Mandatory Seatbelt Ordinance: Under Montana law and the Montana Constitution, a municipality with self-governing powers may enact a mandatory seatbelt ordinance that provides for a fine or jail sentence for violation of the ordinance as long as the fine or penalty does not exceed $500 and the imprisonment does not exceed 6 months for any one offense, and as long as such an ordinance is not prohibited by the city charter. 41 A.G. Op. 47 (1986).

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982), overruled in Harlen v. Helena, 208 M 45, 676 P2d 191, 41 St. Rep. 162 (1984).

Competitive Bidding Requirements Mandatory: A local government unit with self-government powers cannot supersede by the passage of a resolution or ordinance the competitive bidding requirements set forth in 7-5-4302. 37 A.G. Op. 175 (1978).

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24, 25, and 33; or

(b) any power to deviate from or add to the exclusive application of the provisions of:

(i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

(ii) residential tenants' security deposit law in Title 70, chapter 25; or

(iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire;

(21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

(22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in accordance with 7-1-116;

(23) any power to require an employer, other than the local government unit itself, to provide an employee or class of employees with a wage or employment benefit that is not required by state or federal law;

(24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-5-121(2)(c)(iv);

(25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in 16-11-313(1);

(26) any power to control the amount of rent charged for private residential or commercial property. Private residential property does not include property in which the local government unit has a property interest or in which the local government unit has an interest through a housing authority.

(27) any power to require additional licensing when the state is the original issuer of the license;

(28) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider;

(29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels; or

(30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995; amd. Sec. 1, Ch. 446, L. 2001; amd. Sec. 1, Ch. 217, L. 2003; amd. Sec. 2, Ch. 466, L. 2003; amd. Sec. 1, Ch. 561, L. 2003; amd. Sec. 2, Ch. 395, L. 2009; amd. Sec. 1, Ch. 56, L. 2013; amd. Sec. 1, Ch. 173, L. 2015; amd. Sec. 7, Ch. 456, L. 2015; amd. Sec. 2, Ch. 274, L. 2017; amd. Sec. 1, Ch. 420, L. 2017; amd. Sec. 2, Ch. 218, L. 2019; amd. Sec. 37, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 2, Ch. 220, L. 2021; amd. Sec. 2, Ch. 329, L. 2021; amd. Sec. 2, Ch. 354, L. 2021; amd. Sec. 4, Ch. 398, L. 2021; amd. Sec. 1, Ch. 408, L. 2021; amd. Sec. 2, Ch. 455, L. 2021; amd. Sec. 1, Ch. 319, L. 2023; amd. Sec. 1, Ch. 357, L. 2023; amd. Sec. 2, Ch. 435, L. 2023; amd. Sec. 1, Ch. 438, L. 2023; amd. Sec. 1, Ch. 572, L. 2023; amd. Sec. 1, Ch. 578, L. 2023.

Case Notes:

Butte-Silver Bow Self-Government Charter Held Not Superior to Wrongful Discharge From Employment Act: When Babb was appointed the chief executive officer of the Butte-Silver Bow consolidated city-county government, he immediately fired both Johnston and Shea, who had been department heads of the consolidated government for many years. Johnston and Shea then sued Babb for violation of the Wrongful Discharge From Employment Act (WDEA). Babb argued that because the self-government charter of the consolidated government provided that department heads serve "at the pleasure of" the chief executive officer (CEO) of the local government and because self-government charters are superior to statute, Johnston and Shea were "at will" employees to whom the WDEA did not apply. The U.S. Magistrate Judge decided, citing MacMillan v. St. Comp. Ins. Fund, 285 M 202, 947 P2d 75 (1997), that the Montana Supreme Court has held that municipalities operating under self-government charters have limitations as provided in this part, which the self-government charter itself cited, and subsection (2) of this section, which applies Title 39 to local governments operating with self-government powers. Further, the Magistrate Judge decided that under Art. XI, sec. 5(3), Mont. Const., and Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222 (1999), the language of the self-government charter requiring department heads to serve "at the pleasure of" the CEO is not such a part of the structure and organization of local government that it is superior to statute. For these reasons, the Magistrate Judge decided that the WDEA did apply to the firing of Johnston and Shea and that they therefore could not be fired without good cause and granted Johnston and Shea's motion for summary judgment. Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005).

No Prohibition Against Utility Regulation by Municipality: Appellants argued that the restriction in subsection (5) of this section, which prohibits a local government unit from establishing a rate or price

otherwise determined by a state agency, preempted the city of Billings from assessing new utility fees in the form of system development fees for funding the expansion of water and sewer facilities. However, under Title 69, ch. 7, municipal utility rates are not determined by a state agency; rather, unless the rates result in an increase in total revenue of 12% in any 1 year, the exclusive authority to regulate, establish, and change municipal utility rates rests with the city. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Garbage Service Under Self-Government -- No Doctrine of Implied Preemption: Appellant garbage haulers contended that the Legislature preempted the field of garbage regulation by enacting 7-2-4736. Prior to the 1972 Constitution, cities had only those powers expressly given to them by the Legislature, and if the Legislature considered a subject to be a matter of statewide concern, it could enact laws on the subject and preempt local governments from the field. However, Art. XI, sec. 6, Mont. Const., states that a local government which adopts a self-government charter may exercise any power not prohibited by the Constitution, law, or the charter. The city of Billings adopted a self-government charter in 1976, and 7-1-102 allows the city to provide services or perform any functions not expressly prohibited. Powers specifically denied to local governments are enumerated in this section and include the exercise of any power that prohibits the grant or denial of a certificate of public convenience and necessity. Under 69-12-314, garbage haulers are required to get a certificate of public convenience and necessity prior to doing business. The decision by Billings voters that the city should provide garbage services in no way prohibits the grant or denial of a certificate of public necessity. The Supreme Court held that the city was simply exercising its self-government powers to provide a service for its residents and was taxing them for that service. D & F Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977, 43 St. Rep. 74 (1986), overruling Billings v. Weatherwax, 193 M 163, 630 P2d 1216, 38 St. Rep. 1034 (1981).

Limitation on Self-Governing Powers: The city of Billings, a self-governing city, adopted an ordinance purporting to supersede all but two sections in Title 7, ch. 33, part 41, relating to municipal fire departments. The firefighters challenged the ordinance. The District Court held that the ordinance was a permissible exercise of a self-government power. On appeal, the Supreme Court held that under the shared sovereignty concept contained in the Montana Constitution, local governments with self-governing powers are limited only by express prohibitions in the constitution, state statute, or the local government charter itself. By statute, a local government may not establish standards or requirements lower or less stringent than those imposed by state law. The court held that because the ordinance did not contain standards governing several areas it purported to supersede, the ordinance provisions were lower or less stringent than the statutory provisions and therefore invalid. A local government must provide any service required by state law. State law requires every city to have a fire department. Pursuant to Art. XI, sec. 5(3), Mont. Const., the only statutory provisions a self-governing charter may control over are those establishing executive, legislative, and administrative structure and organization. The ordinance was invalid. Billings Firefighters Local 521 v. Billings, 214 M 481, 694 P2d 1335, 42 St. Rep. 112 (1985), followed in Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999). Billings Firefighters Local 521 II was followed, as to the power of a consolidated local government CEO to fire government employees not being considered a part of the structure and organization of a self-governing local government, in Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005), granting partial summary judgment.

Self-Governing Unit Ordinance -- State Statute Silent on Subject of Ordinance: A county's ordinance enacted pursuant to a self-government charter that requires payment of a fee for review by the appointed land surveyor of certificates of survey does not prescribe a lower standard than 76-3-611 (requiring review but no fee), is "not less stringent", and therefore, under 7-1-113, is not the exercise of a power inconsistent with state law. State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100, 38 St. Rep. 71 (1981).

Attorney General Opinions:

Authority of City-County Government to Acquire and Operate Electric and Natural Gas Utilities: A consolidated government with self-government powers, such as the city and county of Butte-Silver Bow, has the authority to acquire and operate electric and natural gas utilities both within and outside the boundaries of the local government unit. The Attorney General determined that Butte-Silver Bow was specifically authorized to do so after considering the local government's charter, constitutional ramifications, and whether the exercise of that authority was prohibited by local government law or other statutes applicable to self-government units and was consistent with state provisions in areas affirmatively subjected to state control, as described in 7-1-113. 48 A.G. Op. 14 (2000). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981), D&F Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977 (1986), and Lechner v. Billings, 244 M 195, 797 P2d 191 (1990).

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

Public Utility Contractor Not to Install Certain Service Lines in Billings Unless Licensed by State as Plumber -- City Required to Check License Qualifications: The city of Billings may not allow public utility contractors to install water and wastewater service lines that extend from the public water or sewer main to a point within the walls of the private property or within 20 feet from any foundation wall of the private residence unless the contractor also has a plumber's license issued by the state. The city is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is licensed by the state as a plumber if the type of work described in the permit requires licensure as a requisite to performance. 44 A.G. Op. 12 (1991). In clarifying this opinion, the Attorney General noted that work done on a public water supply or public sewer system that does not include work falling within the statutory distances for plumbing or drainage systems does not require a state-issued plumber's license. Therefore, the city of Billings may not allow public utility contractors to install water service lines that extend from the public water main to a point within the walls of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines that extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the contractor also has a plumber's license issued by the state. 44 A.G. Op. 39 (1992).

Extraterritorial Extension of City Zoning Regulations: In the absence of applicable county zoning regulations, 76-2-310 authorizes a city of the first class that has adopted a master plan (now growth policy) to extend its zoning regulations extraterritorially within a 3-mile radius of its corporate limits without reference to county boundary lines. 43 A.G. Op. 22 (1989).

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that, subject to 15-10-420, this section may not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation affects the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202; amd. Sec. 3, Ch. 584, L. 1999.

Case Notes:

Self-Government Local Governments Not Prohibited From Adopting No-Smoking Ordinances Affecting Gambling Establishments: Former section 7-1-120 (now repealed) provided: "An establishment that has been granted a permit under Title 23, chapter 5, part 6, for the placement of video gambling machines on the premises is exempt from any local government ordinance that is more restrictive than the provisions of Title 50, chapter 40, part 1", which is the Montana Clean Indoor Air Act of 1979. Under Art. XI, sec. 6, Mont. Const., "A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter." To exempt is not to prohibit. A prohibition cuts off the power to act in the first instance. An exemption assumes that there is authority or power to act and grants freedom or immunity from that power. Section 7-1-120 did not effect an express prohibition of self-governing powers. Therefore, it did not preempt any no-smoking ordinances adopted by a self-governing entity. The state argued that it had preempted the area of state-licensed video gambling machines and that city ordinances limiting or prohibiting smoking in buildings open to the public, one ordinance of which expressly applied to premises with state licenses for video gambling machines, were inconsistent with that preemption. Subsection (5) of this section prohibits a local government with self-government powers from exercising the power to regulate any form of gambling. The cities' clean air ordinances are not an attempt to regulate gambling in contravention of the subsection (5) prohibition; the ordinances regulate clean indoor air, and if that regulation incidentally impacts video gambling machine establishments, that fact does not invalidate the ordinances. The ordinances have incidental impacts on all buildings open to the public. Am. Cancer Soc'y v. St., 2004 MT 376, 325 M 70, 103 P3d 1085 (2004).

City Gross Revenue Franchise Fee on Facilities Using Public Right-of-Way Illegal Tax on Goods and Services: The city of Billings by ordinance established a franchise fee on several public utilities and telecommunications corporations with facilities located in the public right-of-way, and the utilities challenged the fee. The District Court held that the fee constituted an unlawful tax, and the city appealed. Despite the fact that the ordinance was subsequently rejected by voters, rendering the issue moot, the Supreme Court noted that the issue was capable of repetition and therefore accepted jurisdiction of the issue as appropriate in order to finally settle the legality of such fees in case similar ordinances were brought forth in the future. The fee in question was characterized as a franchise fee based on 4% of gross annual revenue generated by each utility that occupied the public right-of-way within the city. However, money collected was not earmarked for right-of-way maintenance or regulation, but was to be used to reduce general property taxes and to fund transportation improvement projects, public safety operations, and park maintenance, and the fee was separate from the city's police power over streets and alleys. The Supreme Court agreed that the unilaterally imposed, revenue-generating gross revenue fee, which was unrelated to the use or occupancy of the right-of-way, was in fact a tax based exclusively on the sale of a product or service within the city and was thus prohibited pursuant to this section. Mont.-Dak. Util. Co. v. Billings, 2003 MT 332, 318 M 407, 80 P3d 1247 (2003), distinguishing State ex rel. Malott v. Bd. of County Comm'rs, 89 M 37, 296 P 1 (1930). See also St. Louis v. W. Union Tel. Co., 148 US 92 (1893), W. Union Tel. Co. v. New Hope, 187 US 419 (1903), and Postal Tel.-Cable Co. v. Taylor, 192 US 64 (1904).

System Development Fee as Service Charge, Not Tax: System development fees that are placed in a special fund earmarked for expanding a city's water and sewer facilities or for retiring bonds issued for that purpose, rather than being held in a general revenue fund to be used on projects unrelated to water and

sewer systems, are not taxes but service charges, which the city is not prohibited from adopting by this section. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Tax on Sale of Attorney's Services -- Invalid: A city ordinance imposing an annual tax on every lawyer or law firm carrying on the practice of law, calculated on the basis of gross revenue generated from attorney-client relationships, was held to be an unconstitutional sales tax. The tax was beyond the scope of self-government powers and in violation of 7-1-112, since it was not related to any regulatory control measure for the health or welfare of the city but was a tax on the sale of attorneys' services. Brueggemann v. Billings, 221 M 375, 719 P2d 768, 43 St. Rep. 905 (1986).

Fee for Occupancy of Motel Room Held a Sales Tax: Where the city of Billings imposed a fee of $1 on each adult transient for each day he occupied a hotel or motel room, the District Court erred in holding that the fee was not a sales tax, prohibited by law, on a service. The fact that the tax is imposed on the occupant rather than upon the passage of possession of the room is not persuasive on the issue of whether the fee is a tax upon a service. The fee is directly connected to the renting of the room, as such a fee is not imposed upon any other type of business. The ordinance imposing the fee is illegal and void. Mont. Innkeepers Ass'n v. Billings, 206 M 425, 671 P2d 21, 40 St. Rep. 1753 (1983).

Attorney General Opinions:

Municipal Tiered Resort Tax Allowed: Resort tax statutes neither prohibit nor explicitly permit a differential tax schedule. However, a differential tax structure is not inconsistent with concerns revealed in the legislative history and may arguably further the express statutory purposes by taxing at a higher rate those businesses drawing more of their customers from tourists than those businesses serving a greater proportion of local residents. Therefore, a municipality with self-governing powers may establish a tiered resort tax schedule providing different tax rates for similar goods or services according to the character of the business in which the goods or services are offered, as long as none of the tax rates exceed 3%. 48 A.G. Op. 25 (2000).

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.

Case Notes:

Local Development Code Regulating Sale of Alcoholic Beverages Not Preempted by State: Montana's statutory framework for the regulation of alcohol clearly contemplates that cities will impose local zoning that regulates the sale of alcohol. The development code of the city of Red Lodge, a self-governing city, being consistent with and stricter than the state's regulations, was not preempted by state law. Town Pump, Inc. v.

Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998), overruling State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966).

No Mandatory Application of Wastewater Treatment Regulation by Local Board of Health: Under 76-3-501, review and approval or disapproval of a subdivision under the Montana Subdivision and Platting Act may occur only under regulations in effect at the time that an application is submitted to the governing body. The Lewis and Clark County Commission approved the Green Acres subdivision in July 1990, at which time the Lewis and Clark County Board of Health's onsite wastewater treatment regulations mandated shallow standard treatment systems, rather than the present regulation requiring intermittent sand filters. Skinner Enterprises, Inc., argued that the 1990 regulation should be applied pursuant to 76-3-501. However, local boards of health derive authority to regulate subdivisions from 50-2-116, not from the Montana Subdivision and Platting Act. Therefore, the local board's own onsite wastewater treatment regulations did not obligate the local board to apply the 1990 regulation. Further, 50-2-130 allows local boards of health to promulgate regulations that are more stringent than comparable state regulations, notwithstanding the provisions of this section prohibiting a local government from exercising any power inconsistent with state law or administrative regulations. The facts regarding whether shallow-capped drainfields or intermittent sand filters are considered more stringent were not the subject of the present appeal. The discretionary authority of the local board of health to regulate subdivision sanitation by requiring intermittent sand filters was affirmed. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997). In early 1998, prior to trial, the Board again amended the onsite wastewater treatment regulations, superseding the 1995 regulations to which Skinner objected. As a result, the legality of the 1995 amendments were no longer of any practical consequence to the parties and Skinner's objections to the process by which the 1995 amendments were adopted were moot and properly dismissed. Skinner Enterprises, Inc. v. Lewis & Clark City-County Health Dept., 1999 MT 106, 294 M 310, 980 P2d 1049, 56 St. Rep. 438 (1999).

Setting of Municipal Utility Rates Not Subjected to State Control: The setting of rates and charges for municipal utilities has not been affirmatively subjected to state control within the meaning of this section. The enforcement of standards or requirements and the power to establish administrative rules in the area of municipal ratemaking are not vested in any state agency or officer. Rather, 69-7-201 requires the municipal utility, with the concurrence of the municipal governing body, to adopt rules for operating the utility. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Limitation on Self-Governing Powers: The city of Billings, a self-governing city, adopted an ordinance purporting to supersede all but two sections in Title 7, ch. 33, part 41, relating to municipal fire departments. The firefighters challenged the ordinance. The District Court held that the ordinance was a permissible exercise of a self-government power. On appeal, the Supreme Court held that under the shared sovereignty concept contained in the Montana Constitution, local governments with self-governing powers are limited only by express prohibitions in the constitution, state statute, or the local government charter itself. By statute, a local government may not establish standards or requirements lower or less stringent than those imposed by state law. The court held that because the ordinance did not contain standards governing several areas it purported to supersede, the ordinance provisions were lower or less stringent than the statutory provisions and therefore invalid. A local government must provide any service required by state law. State law requires every city to have a fire department. Pursuant to Art. XI, sec. 5(3), Mont. Const., the only statutory provisions a self-governing charter may control over are those establishing executive, legislative, and administrative structure and organization. The ordinance was invalid. Billings Firefighters Local 521 v. Billings, 214 M 481, 694 P2d 1335, 42 St. Rep. 112 (1985), followed in Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999). Billings Firefighters Local 521 II was followed, as to the power of a consolidated local government CEO to fire government employees not being considered a part of the

structure and organization of a self-governing local government, in Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005), granting partial summary judgment.

Self-Governing Unit Ordinance -- State Statute Silent on Subject of Ordinance: A county's ordinance enacted pursuant to a self-government charter that requires payment of a fee for review by the appointed land surveyor of certificates of survey does not prescribe a lower standard than 76-3-611 (requiring review but no fee), is "not less stringent", and therefore, under 7-1-113, is not the exercise of a power inconsistent with state law. State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100, 38 St. Rep. 71 (1981).

Attorney General Opinions:

Municipal Authority to Set Water and Sewer Service Rates -- Applicability of Human Rights Act to Setting of Water and Sewer Rates: A provision in 7-13-4304 provides that the rates for municipal water and sewer charges may be fixed in advance and must be uniform for like services in all parts of the municipality. The city of Bozeman sought to provide discounts or preferential rates to senior citizens on water and wastewater charges. The question was whether the senior rates violated the statutory requirement for uniform or equitable rates. The Attorney General held that because water and sewer ratemaking is not an area affirmatively subject to state control, a local government with self-government powers may set rates for those services without regard to the requirements of 7-13-4304. However, the Attorney General noted that age discrimination does violate Title 49, ch. 2, commonly known as the Montana Human Rights Act, that Bozeman is subject to the Act despite its status as a self-governing municipality, and that discrimination in government services is affirmatively subject to state control. Without deciding whether Bozeman's proposed ordinance would meet the standard of strict construction of reasonable grounds based on age, the Attorney General nevertheless concluded that 49-2-308 of the Act did apply to the Bozeman ordinance setting senior rates for municipal water and sewer services. 50 A.G. Op. 10 (2004).

Authority of City-County Government to Acquire and Operate Electric and Natural Gas Utilities: A consolidated government with self-government powers, such as the city and county of Butte-Silver Bow, has the authority to acquire and operate electric and natural gas utilities both within and outside the boundaries of the local government unit. The Attorney General determined that Butte-Silver Bow was specifically authorized to do so after considering the local government's charter, constitutional ramifications, and whether the exercise of that authority was prohibited by local government law or other statutes applicable to self-government units and was consistent with state provisions in areas affirmatively subjected to state control, as described in this section. 48 A.G. Op. 14 (2000). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981), D&F Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977 (1986), and Lechner v. Billings, 244 M 195, 797 P2d 191 (1990).

No Authority for Self-Governing City to Assess Fire Service Fees to State Property Within Fire Service Area: The city of Helena, a self-governing city, is precluded from assessing fire service fees to state property located in the city fire service area because the fees are a tax for services provided for the general public good, and thus prohibited by 15-6-201(1)(a)(ii), rather than an assessment commensurate with a specific benefit conferred on the assessed property. 46 A.G. Op. 7 (1995).

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

Funeral Procession Vehicles Not to Be Exempted From Traffic Laws by City Ordinance: A city with self-government powers may not enact an ordinance exempting vehicles in a funeral procession from obeying traffic control devices by designating the vehicles as authorized emergency vehicles. 43 A.G. Op. 53 (1990).

Sale of City Land by City With Self-Government Powers -- Vote Required: Although subsection (2)(a) of 7-8-4201 requires a two-thirds vote of the city commission to sell city land, a city with self-governing powers may enact a superseding ordinance allowing the sale of city land by a simple majority vote. 43 A.G. Op. 41 (1989). After analyzing 7-8-4201(2)(b), the Attorney General applied the same analysis and conclusion to allow the governing body of a local government unit with self-governing powers to enact an ordinance providing for the disposition by majority vote of the council of property held in trust for a specific purpose. 43 A.G. Op. 55 (1990).

Local Governments Preempted by State Law From Controlling Beer Sales: By enacting 16-1-102, the Legislature reserved to the state the entire control of the manufacture, sale, and distribution of beer. Thus, neither cities nor counties have authority to enact ordinances requiring distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

Self-Government Powers -- Professional Licensing -- Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982), overruled in Harlen v. Helena, 208 M 45, 676 P2d 191, 41 St. Rep. 162 (1984).

County Powers -- Revenue Funds: Unless a specific mode or manner of action is mandated by statute, counties may contract with individuals or private organizations, including nonprofit service organizations, for the purchase of services or materials the counties are authorized by statute to provide their constituents if the contracts are reasonable and appropriate methods of furnishing services or materials. Counties may use federal revenue sharing funds to purchase any services or materials they could use county tax revenues to purchase. 37 A.G. Op. 105 (1978).

Increase in County Attorney's Salary: A county having self-government powers may grant an increase in salary to its County Attorney in excess of the amount provided in 7-4-2503, but the increase must be borne by the general fund of the county. 37 A.G. Op. 70 (1977).

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) all state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation, or exclusion of territory from a city or town, for the creation, abandonment, or boundary alteration of counties, and for city-county consolidation;

(b) Title 7, chapter 3, part 1;

(c) all laws establishing legislative procedures or requirements for units of local government;

(d) all laws regulating the election of local officials;

(e) all laws that require or regulate planning or zoning;

(f) any 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;

(g) except as provided in subsection (3), any law regulating the budget, finance, or borrowing procedures and powers of local governments;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

(3) (a) Notwithstanding the provisions of subsection (1)(g) and except as provided in subsection (3)(b), self-governing local government units are not subject to the mill levy limits established by state law.

(b) The provisions of 15-10-420 apply to self-governing local government units.

History: En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204; amd. Sec. 29, Ch. 42, L. 1997; amd. Sec. 4, Ch. 584, L. 1999; amd. Sec. 42, Ch. 278, L. 2001.

Case Notes:

Recorded Waiver of Annexation Protest by Prior Property Owner -- Present Owner Precluded From Protesting Annexation: In 1966, the city of Whitefish adopted a policy that a landowner outside the city boundary had to agree to waive the right to protest future annexation in order to continue to receive city water and sewer services. The waivers were properly recorded and later used by the city to invalidate annexation protests by current landowners in 1998. The District Court concluded that the waivers constituted a covenant running with the land and that the current owners were precluded from protesting the proposed annexation. On appeal, the current owners argued that the right to protest in 7-2-4710 resided with the current property owner and that the statutory consent to annexation authorized by 7-13-4314 applied only to the initiation of services and could not transfer to subsequent purchasers. The Supreme Court disagreed. Under 7-1-113, a self-governing entity may act even when there are controlling state laws as long as the local government's actions are not inconsistent with or lower or less stringent than state requirements. The purpose of 7-13-4314 is to ensure that property owners outside a municipality can request utility services and to ensure that the local government can later require annexation in exchange for utilities. Creating a covenant that runs with the land furthers this purpose. In addition, 70-17-203 also provides that every covenant made for the direct benefit of the property runs with the land. The waivers directly benefited the property and were allowable, so the District Court was affirmed. Gregg v. Whitefish City Council, 2004 MT 262, 323 M 109, 99 P3d 151 (2004). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981).

Suspension of Firefighters -- All Cities Required to Present Charges to City Council for Hearing -- Suspension Procedure Not Part of "Structure" of City Government Under Applicable Definitions -- Statute Not Superseded by Charter: Elsenpeter, a Billings firefighter, was suspended from duty by the Billings fire chief. The firefighters' union filed a lawsuit in which the union contended that the suspension procedure used by the city was unlawful because the charges against Elsenpeter were not presented to the Billings City Council for hearing pursuant to 7-33-4124. The city contended that the suspension procedure that it used is part of the structure and organization of the city under its charter and that, pursuant to Art. XI, sec. 5, Mont. Const., and 7-3-701(2), which allow the structure of a chartered city government to supersede statutory requirements, the city may override the statutory requirements for hearing contained in 7-33-4124 because the definition of "structure" contained in 7-1-4121(24) is the definition that should apply. The Supreme Court held that in as much as the definitions in 7-1-4121 are, by the terms of that section, limited in their application to 7-1-4121 through 7-1-4149, the dictionary definition of "structure" is the definition that applies. Because the dictionary definition of structure was narrower, the Supreme Court held that the disciplinary suspension procedure used by the city was not part of the "structure" of city government. Therefore, the Supreme Court held that the statutory procedure contained in 7-33-4124, requiring presentment of the charges to the City Council, was not superseded by the city charter and had to be followed for the purposes of the suspension of Elsenpeter. Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999). Billings Firefighters Local 521 II was followed, as to the power of a consolidated local government CEO to fire government employees not being considered a part of the structure and organization of a self-governing local government, in Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005), granting partial summary judgment.

Statutory Duty of City Council to Hold Termination Hearing Not Superseded by City Policy or Collective Bargaining Agreement: Phillips was terminated from his employment as a full-time firefighter for the city of Livingston. Before his termination, the city manager held a termination hearing. Phillips argued that the hearing was held in violation of 7-33-4124, requiring the hearing to be held before the City Council. The city responded that the termination procedures followed were provided in the city policy and procedures manual that was included in the firefighters' collective bargaining agreement and that the provisions of that agreement controlled pursuant to 39-31-306(3). The Supreme Court noted that the agreement adopted the city's procedures manual that allowed the manager to hold the hearing but that the agreement also referenced termination action "by the appropriate authority". Because the appropriate authority under 7-33-4124 was the City Council, the Supreme Court held that the agreement and the city's policies did not supersede state statute. Phillips v. Livingston, 268 M 156, 885 P2d 528, 51 St. Rep. 1227 (1994), followed, as to the inability of a city charter to supersede the statutory duty of a City Council to hold a disciplinary hearing, in Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999).

Establishment of Refuse Disposal District by County With Self-Governing Power: Title 7, ch. 13, part 2 (now repealed), is not mandatory upon a county charter form of government when it establishes a refuse disposal district and system. That part applies to the establishment of a refuse disposal district by governments that are of general power status, not those with self-government status. Title 7, ch. 13, part 2 (now repealed), does not direct or require a local government to provide a service within the meaning of this section. Clopton v. Madison County Comm'n, 216 M 335, 701 P2d 347, 42 St. Rep. 851 (1985).

Limitation on Self-Governing Powers: The city of Billings, a self-governing city, adopted an ordinance purporting to supersede all but two sections in Title 7, ch. 33, part 41, relating to municipal fire departments. The firefighters challenged the ordinance. The District Court held that the ordinance was a permissible exercise of a self-government power. On appeal, the Supreme Court held that under the shared sovereignty concept contained in the Montana Constitution, local governments with self-governing powers are limited only by express prohibitions in the constitution, state statute, or the local government charter itself. By statute, a local government may not establish standards or requirements lower or less stringent than those imposed by state law. The court held that because the ordinance did not contain standards governing several areas it purported to supersede, the ordinance provisions were lower or less stringent than the statutory provisions and therefore invalid. A local government must provide any service required by state law. State law requires every city to have a fire department. Pursuant to Art. XI, sec. 5(3), Mont. Const., the only statutory provisions a self-governing charter may control over are those establishing executive, legislative, and administrative structure and organization. The ordinance was invalid. Billings Firefighters Local 521 v. Billings, 214 M 481, 694 P2d 1335, 42 St. Rep. 112 (1985), followed in Billings Firefighters Local 521 v. Billings, 1999 MT 6, 293 M 41, 973 P2d 222, 56 St. Rep. 23 (1999). Billings Firefighters Local 521 II was followed, as to the power of a consolidated local government CEO to fire government employees not being considered a part of the structure and organization of a self-governing local government, in Johnston v. Babb, Cause No. CV-05-03-BU-CSO (D. Mont. 2005), granting partial summary judgment.

Attorney General Opinions:

Municipal Planning Board Not to Be Vested With Municipal Zoning Commission Powers: Authorization does not exist for designation of a city planning board as a zoning commission, and this section prohibits establishment of an alternative zoning system by local ordinance. Therefore, a city exercising self-government powers may not vest its municipal planning board with powers vested in municipal zoning commissions by 76-2-307. 47 A.G. Op. 4 (1997).

No Authority for Self-Governing City to Assess Fire Service Fees to State Property Within Fire Service Area: The city of Helena, a self-governing city, is precluded from assessing fire service fees to state property

located in the city fire service area because the fees are a tax for services provided for the general public good, and thus prohibited by 15-6-201(1)(a)(ii), rather than an assessment commensurate with a specific benefit conferred on the assessed property. 46 A.G. Op. 7 (1995).

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

City Not Authorized to Reduce Office Hours: The phrase "unless otherwise provided by law", as used in 7-4-102, does not authorize a city to enact a municipal ordinance reducing the number of hours during which city offices must be open. Subsection (1)(f) of this section prohibits a city from reducing its office hours beyond those required by 7-4-102. 43 A.G. Op. 16 (1989).

Local Government Subject to State Zoning Laws -- Ordinance Creating Appeal Prohibited: Section 7-1-114 prohibits a local legislative body from providing for an optional appeal of decisions from the local zoning Board of Adjustment to the legislative body since 76-2-327 provides that appeal may only be to a court of record. Section 76-2-321 authorizes the local legislative body to act instead of the Board of Adjustment in certain cases, not in addition to the Board. 38 A.G. Op. 98 (1980).

Mandatory Provisions -- Procedural Laws: Section 7-1-114 applies to procedural as well as substantive laws. 38 A.G. Op. 98 (1980).

Local Governments -- Authority to Borrow From Financial Institutions: A county, city, or town with general government or self-government powers can incur indebtedness by borrowing money directly from a financial institution. This authority to borrow does not change the debt limitations on the local government. 38 A.G. Op. 14 (1979).

Competitive Bidding Requirements Mandatory: A local government unit with self-government powers cannot supersede by the passage of a resolution or ordinance the competitive bidding requirements set forth in 7-5-4302. 37 A.G. Op. 175 (1978).

Self-Government Powers: Section 7-4-2503 does not apply to self-government units since it may be superseded by ordinance or resolution of the Commission and is not prohibited by 7-1-114(1)(g). 37 A.G. Op. 68 (1977).

7-1-115. Governmental right to sue firearms or ammunition manufacturer, trade association, or dealer in tort or for abatement or injunctive relief. The governmental right to bring suit against a firearms or ammunition manufacturer, trade association, or dealer for abatement, injunctive relief, or tort damages resulting from or relating to the design, manufacture, marketing, or sale of firearms or ammunition sold to the public is reserved exclusively to the state and may not be exercised by a local governmental unit. The state may sue under this section on its own behalf or on behalf of a local governmental unit, or both.

History: En. Sec. 2, Ch. 581, L. 1999.

7-1-116. Carbon fees, taxation, or penalties — prohibition. (1) A local government may not enact, adopt, implement, enforce, or refer to the electorate a rule, order, ordinance, or policy that includes fees, taxation, or penalties based on carbon or carbon use.

(2) (a) Fees, taxation, or penalties based on carbon or carbon use include formal or informal rules, orders, ordinances, or policies, including but not limited to:

(i) charges placed on resident or business electrical, natural gas, propane, or other energy bills or statements based on usage or carbon content; or

(ii) any other method, tax, or fee levied on the carbon content of fuels or electricity in the transportation or energy sector.

(b) This subsection (2)(b) does not include energy conservation bonds as provided in 7-7-141 or energy performance contracts pursuant to Title 90, chapter 4, part 11.

(3) Nothing in this section prohibits a local government from participating in a service offered through a tariff approved by the public service commission.

(4) For the purposes of this section, "local government" includes a county, a consolidated government, an incorporated city or town, or a special district.

History: En. Sec. 1, Ch. 329, L. 2021.

7-1-117. Energy source restrictions — prohibition. (1) Notwithstanding any other provision of law, a local government may not adopt or enforce an ordinance, resolution, or policy that prohibits or impedes, or has the effect of prohibiting or impeding, the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider.

(2) For the purposes of this section, "local government" includes a county, a consolidated government, an incorporated city or town, or a special district.

History: En. Sec. 1, Ch. 435, L. 2023.

7-1-121. Statewide uniformity for auxiliary container regulations — local prohibitions — definitions. (1) The purpose of this section is to preempt any local ordinance, resolution, initiative, or referendum regulating the use, disposition, sale, prohibitions, fees, charges, or taxes on certain containers.

(2) Except as provided in subsection (3), a local unit of government may not adopt or enforce any local ordinance, resolution, initiative, or referendum that:

(a) regulates the use, disposition, or sale of auxiliary containers;

(b) prohibits or restricts auxiliary containers; or

(c) imposes a fee, charge, or tax on auxiliary containers.

(3) The prohibitions in subsection (2) may not be construed to prohibit, restrict, or apply to any of the following:

(a) a curbside recycling program;

(b) a designated residential or commercial recycling location;

(c) a commercial recycling program;

(d) an ordinance that prohibits littering; or

(e) the use of auxiliary containers on property owned by a local unit of government.

(4) As used in this section, unless the context requires otherwise, the following definitions apply:

(a) "Auxiliary container" means a bag, cup, bottle, can, device, eating or drinking utensil or tool, or other packaging, whether reusable or single use, that is:

(i) made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated material, aluminum, glass, postconsumer recycled material, or similar material or substrates, including coated, laminated, or multilayer substrates; and

(ii) designed for transporting, consuming, or protecting merchandise, food, or a beverage to or from, or at, a food service, manufacturing, distribution or processing facility, or retail facility.

(b) "Local unit of government" means any county, municipality, school district, special district or other political subdivision of the state, including any agency or governing body of a local unit of government as defined by 7-4-502, or a similar unit of government of another state or nation.

History: En. Sec. 1, Ch. 220, L. 2021.