

DISTRIBUTED BY:
CROSBY OPINION SERVICE
2210 East 6th Ave.
Helena, MT 59601
406-443-3418

VOLUME NO. 46

OPINION NO. 12

ANNEXATION - Authority of municipality to annex land parcel as condition of continuing water and/or sewer service;
CITIES AND TOWNS - Annexation as condition of continuing water and/or sewer service;
MUNICIPAL GOVERNMENT - Authority to annex property as condition of continuing water and/or sewer service;
PROPERTY, REAL - Authority of municipality to annex land parcel as condition of continuing water and/or sewer service;
SEWERS - Authority of municipality to annex land parcel as condition of continuing sewer service;
MONTANA CODE ANNOTATED - Sections 7-13-4314, 69-7-201;
MONTANA LAWS OF 1981 - Chapter 607;
MONTANA LAWS OF 1971 - Chapter 229.

HELD: A city or town in Montana may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service.

December 29, 1995

Mr. Joseph R. Hunt
Shelby City Attorney
P.O. Box 743
Shelby, MT 59474

Dear Mr. Hunt:

You have requested my opinion on the following question:

May a city or town in Montana impose annexation as a requirement of continued water and/or sewer service?

Shelby, a city of general government powers, has for some time extended water and sewer service to several parcels of land outside the city limits without requiring the annexation of the parcels into the city. Shelby now seeks to annex the parcels in order to thoroughly address problems that have arisen with the privately installed water systems.

It is clear that Shelby could have annexed the property involved prior to the initiation of water and/or sewer services. Mont. Code Ann. § 7-13-4314. However, because the annexation did not occur then, the question arises whether the city now has the power to require annexation.

It is my opinion that Shelby has the authority to adopt a rule requiring annexation of properties utilizing the municipal water and/or sewer services.

Mont. Code Ann. § 69-7-201 states in pertinent part:

Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. . . . **The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries.**

(Emphasis added.) The legislature's use here of the phrase "extension of service" is significant. It indicates a legislative intent to grant cities and towns broad authority to adopt rules for the operation of municipal utilities in situations such as the one you present. Rather than merely establishing a condition to initiate service, as in Mont. Code Ann. § 7-13-4314, cities and towns are authorized to adopt rules such as ones that would condition ongoing service upon consent to annexation.

The argument could be made that because the legislature chose only to specifically authorize making consent to annexation a condition of initiating sewer or water service, it did not intend that consent be a condition of anything else, such as continuing service.

I disagree with this view for several reasons. First, the legislature's choice of different language in the two code sections under discussion implies that a different meaning and effect were intended. In re Kesl's Estate, 117 Mont. 377, 386, 161 P.2d 641, 645 (1945). Second, the legislature authorized making consent to annexation a condition of initiating municipal water or sewer service in 1971 (1971 Mont. Laws ch. 229). Ten years later, the legislature authorized municipalities to adopt rules for the extension of service to users outside the municipal boundaries (1981 Mont. Laws ch. 607). As a general rule, one should attempt to harmonize related statutes, Matter of W.J.H., 226 Mont. 479, 483, 736 P.2d 484, 486-87 (1987); however, to the extent of any repugnancy, later statutes control earlier ones, Wiley v. District

46 Op. Att'y Gen. No. 12
December 29, 1995
Page 3

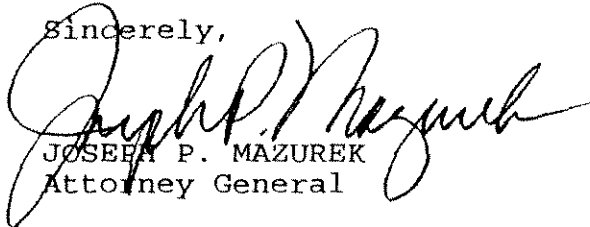
Court, 118 Mont. 50, 55, 164 P.2d 358, 361 (1945). I conclude that the 1981 legislature intended to authorize increased municipal powers in the operation of municipal utilities and, as I said above, permit the adoption of a rule of the type about which you inquire.

The fact that the city of Shelby does not have self-government powers does not pose a problem here, because the power to adopt a rule of this type is implied by law from the language of Mont. Code Ann. § 69-7-201, and is thus a power of all municipalities whether having general or self-government powers.

THEREFORE, IT IS MY OPINION:

A city or town in Montana may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/kaa