

46 Op. Att'y Gen. No. 16

BUILDING CODES - Municipal jurisdictional areas;
CITIES AND TOWNS - Municipal jurisdic
COMMERCE, DEPARTMENT OF - Municipal jurisdictional areas for building construction regulations;
ADMINISTRATIVE RULES OF MONTANA - Section 8.70.211;
MONTANA CODE ANNOTATED - Sections 2-4-102(11)(a), 50-60-101(10);
MONTANA CONSTITUTION - Article II, section 8;
MONTANA LAWS OF 1985 - Chapter 352.

HELD:

Any extension of a delineated municipal jurisdictional area extending beyond the corporate limits of a municipality must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211, which require a municipality to submit and the Department of Commerce to act upon a new request for approval of the extension.

April 4, 1996

Mr. Jon Noel, Director
Department of Commerce
1424 Ninth Avenue
P.O. Box 200501
Helena, MT 59620-0501

Dear Mr. Noel:

You have requested my opinion on the following question:

Does a municipal jurisdictional area extended beyond the corporate limits of a municipality pursuant to Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211 automatically expand each time the municipality extends its corporate limits, or must the municipality submit and the Department of Commerce act upon a new request for approval of extension of a municipal jurisdictional area for building code enforcement each time the municipality extends its corporate limits?

You have informed me that, pursuant to Mont. Code Ann. § 50-60-302, the City of Billings was certified as a building code enforcement unit on August 14, 1979. At that time, the City received approval from the Montana Department of Administration to enforce the state building code in a municipal jurisdictional area extending 4½ miles beyond its corporate limits, as authorized under Mont. Code Ann. § 50-60-101(10)(b)(i).

You have further informed me that, on November 19, 1984, the City sent to the Department of Administration an "annual update" of the 4½-mile jurisdictional area. The Department regarded the November 19, 1984, document as an "extension notification" rather than a written request for extension of the municipal jurisdictional area. Therefore, the Department took no action as a result of the document received from the City.

On July 1, 1985, responsibility for enforcement of the state building construction standards was transferred from the Department of Administration to the Department of Commerce. 1985 Mont. Laws, ch. 352. On October 18, 1985, the Department of Commerce received notification from the City of Billings regarding another annexation to the city's corporate limits accompanied by a map illustrating the expanded corporate and building code enforcement limits. The Department took no action regarding the notification. The Department contends that, once a municipal jurisdictional area is approved to 4½ miles beyond the corporate limits of the city, it remains in effect for 4½ miles beyond those limits, no matter how the corporate limits are subsequently altered. Consequently, the Department maintains it is not required by rule or law to treat these written "extension updates" as written requests for a municipal jurisdictional area pursuant to Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211.

After careful review of the applicable law, I have concluded that the Department's position is erroneous. Pursuant to Mont. Code Ann. § 50-60-101(10)(a), a "municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. The statute further provides that, upon request of a municipality, the Department of Commerce may approve extension of the jurisdictional area to include all or part of the area within 4½ miles of the corporate limits of a municipality, all of any platted subdivision which is partially within 4½ miles of the corporate limits of a municipality, and all of any zoning district adopted pursuant to title 76, chapter 2, part 1 or 2, which is partially within 4½ miles of the corporate limits. Mont. Code Ann. § 50-60-101(10)(b). In my opinion, the statute contemplates approval of finite boundaries of the municipal jurisdictional area following a request by the municipality. It does not speak in terms of a "rolling" jurisdictional area which is extended automatically with corporate limits.

An administrative rule of the Department of Commerce, Mont. Admin. R. 8.70.211, which was adopted to implement Mont. Code Ann. § 50-60-101(10)(b), wholly supports this interpretation of the statute. A substantive rule, adopted in accordance with the Montana Administrative Procedure Act, has the force of law. Mont. Code Ann. § 2-4-102(11)(a). The rule recognizes that municipalities may extend their inspection jurisdiction up to 4½ miles from their corporate limits upon written request and approval by the Department. It further provides that the written request must include a statement as to how the additional workload will be handled, and that, once the city is granted authority to inspect within the 4½-mile jurisdictional area, the county may not inspect in that area unless the city relinquishes its right or loses its certification as a local government inspection program. Mont. Admin. R. 8.70.212(1). When a written request to extend the jurisdictional area is received, the Department of Commerce is required by Mont. Admin. R. 8.70.211 to use the following procedure in considering the extension:

(a) The bureau [of the Department of Commerce] will publish a notice in a newspaper of general circulation ***in the area to be affected***.

(b) The notice will also be posted in the county courthouse and in the city hall.

(c) The notice will provide the opportunity for the public to submit written and verbal comments to the bureau regarding the extension.

(i) Thirty days will be allowed for submittal of comments.

(ii) Twenty days will be allowed ***for the affected public to request a hearing on the extension***. If 25 or more persons request a hearing or if the county or municipality requests a hearing, one will be held in the municipality by the bureau.

(d) The final decision of the bureau regarding the extension will be published in the newspaper of general circulation.

Mont. Admin. R. 8.70.211(2) (emphasis supplied).

My function in construing legislation is to effect the intention of the legislature, and, in determining legislative intent, I look first to the plain meaning of the words used in the statute. State ex rel. Roberts v. Public Serv. Comm'n, 242 Mont. 242, 246, 790 P.2d 489, 492 (1990). In my opinion, the language and intent of the statute and the rule are clear. Establishment of a municipal jurisdictional area involves the creation of a finite, delineated area following notice to and an opportunity for the ***affected public***, the city and ***the county*** to comment and request a hearing on the area. I conclude that the establishment of such an area does not establish a rolling extension of jurisdiction which expands automatically whenever the corporate limits of the municipality are expanded. ***Any*** extension of a delineated municipal jurisdictional area must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211.

Interested parties have raised the issue of whether the Department's interpretation of Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211 violates the right to public participation set forth in article II, section 8 of the Montana Constitution. Like the courts, the Attorney General avoids deciding

constitutional issues whenever possible. See Wolfe v. State Dep't of Labor & Indus., 255 Mont. 336, 339, 843 P.2d 338, 340 (1992), citing Ingraham v. Champion Int'l, 243 Mont. 42, 46, 793 P.2d 769, 771 (1990). Because I am able to resolve the questions presented by applying the rules of statutory construction, I will not reach the constitutional issue.

THEREFORE, IT IS MY OPINION:

Any extension of a delineated municipal jurisdictional area extending beyond the corporate limits of a municipality must be accomplished following the procedure mandated by Mont. Code Ann. § 50-60-101(10) and Mont. Admin. R. 8.70.211, which require a municipality to submit and the Department of Commerce to act upon a new request for approval of the extension.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/ks/brf