

CITIES AND TOWNS - Contracts for city-county planning board staff;
COUNTIES - Contracts for city-county planning board staff;
INTERGOVERNMENTAL COOPERATION - Contracts for city-county planning board staff;
LOCAL GOVERNMENT - Contracts for city-county planning board staff;
ZONING AND PLANNING - Application of Mont. Code Ann. § 76-1-306 to contracts for staff of planning boards;
MONTANA CODE ANNOTATED - Sections 76-1-305, -306;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 75 (1981).

HELD: A city-county planning board established under Montana Code Annotated Title 76, chapter 1, may enter into a contract with the city to provide the professional services of a planning director and staff that are subject to the supervision of the city manager rather than the planning board.

February 6, 2003

Mr. Brent Brooks
City Attorney
P.O. Box 1178
Billings, MT 59103

Dear Mr. Brooks:

You have requested my opinion on a question I have framed as follows:

Where a city-county planning board has been established under Montana Code Annotated Title 76, chapter 1, may the city and county enter into an agreement to provide that the planning director and staff are subject to the supervision of the city manager rather than the planning board?

Your letter informs me that the City of Billings, the Town of Broadview, and Yellowstone County have for some time been joined together in a city-county planning board. Your letter further informs me that the parties are discussing amendments to the interlocal agreement that created the Board. In the course of these discussions the question has arisen whether the City-County Planning Director and staff may lawfully be subject to the direct supervision of the Billings City Manager.

Title 76, chapter 1 of the Montana Code Annotated provides for the creation of planning boards to advise local governments regarding growth issues. The statutes allow the

creation of city, county, city-county, and joint or consolidated planning boards, and set forth the procedures for the creation and operation of each.

Mont. Code Ann. § 76-1-305 provides that the Board shall have the power and duty to “exercise general supervision of and make regulations for the administration of the affairs of the board.”

Mont. Code Ann. § 76-1-306 states:

(1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

Subsection (1) of the above statute provides that the Board may appoint employees as are necessary for the discharge of the duties of the Board. However, nothing in state law precludes the planning board from contracting for these staff services. In fact, Mont. Code Ann. § 76-1-306(3) specifically allows the Board to make contracts for “any professional services.”

Moreover, nothing in state law precludes the city from entering into such a contract. The city has adopted a self-government charter, and it may exercise any power not prohibited by law. Mont. Const. art. XI, § 6.

In Op. Att’y Gen. No. 75 (1981), Attorney General Greely considered the question of whether a joint city-county planning board could delegate to a subcommittee certain of its functions, without requiring that the full board review and approve the subcommittee’s decisions. The opinion held that certain functions of the joint city-county planning board require the “official action” of the board, and included within that category “the hiring and firing of employees” pursuant to Mont. Code Ann. § 76-1-306. Thus, the opinion concluded, the board could delegate the work in these areas to a subcommittee of the board, but the Board must retain final decision-making authority with respect to the

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subcommittee's recommendations. That opinion, however, did not address the question of whether the full Board could contract for all professional services.

It appears from information provided in connection with this request that the staff serving the joint planning board in this case are employees of the City of Billings who are assigned staffing functions for the Board in addition to other zoning and planning duties that are city functions and not functions of the Board. I note that the Board's power to hire and supervise staff under Mont. Code Ann. § 76-1-306 applies only to "employees of the board." While the statute requires that the Board be responsible for hiring and supervising staff that it "appoints" pursuant to Mont. Code Ann. § 76-1-306, the statute does not prevent the Board from contracting with the city for the services of city employees.

THEREFORE IT IS MY OPINION:

A city-county planning board established under Montana Code Annotated Title 76, chapter 1, may enter into a contract with the city to provide the professional services of a planning director and staff that are subject to the supervision of the city manager rather than the planning board.

Very truly yours,

MIKE McGRATH
Attorney General

mm/jym