

ADMINISTRATION, DEPARTMENT OF - Cooperative purchasing procedures between municipalities and the state;

CITIES AND TOWNS - Cooperative purchasing procedures between municipalities and the state;

LOCAL GOVERNMENT - Cooperative purchasing procedures between municipalities and the state;

MUNICIPAL GOVERNMENT - Cooperative purchasing procedures between municipalities and the state;

PUBLIC FUNDS - Cooperative purchasing procedures between municipalities and the state;

STATUTORY CONSTRUCTION - Harmonizing statutes that are in pari materia;

MONTANA CODE ANNOTATED - Titles 7, 18; sections 1-2-101, -102, 7-5-4302, 18-4-401 to -407, -402.

HELD: A municipality may choose to participate in cooperative purchasing with the Department of Administration of the State of Montana pursuant to Mont. Code Ann. §§ 18-4-401 to -407 without first seeking its own competitive bids as an alternative to the competitive bidding requirements set forth in Mont. Code Ann. § 7-5-4302.

March 16, 2006

Mr. Jim Nugent
Missoula City Attorney
435 Ryman Street
Missoula, MT. 59802

Dear Mr. Nugent:

You have requested my opinion on the relationship between a statute that imposes competitive, advertised bid requirements upon certain municipal government purchases, Mont. Code Ann. § 7-5-4302, and the statute that authorizes local governments to enter into cooperative purchasing agreements with the State of Montana, Mont. Code Ann. §§ 18-4-401 to -407. I have rephrased your question as follows:

When a municipality seeks to purchase a service or an item of personal property, and the cost of the service or property exceeds \$50,000, may the municipality participate in a cooperative purchasing agreement with the Department of Administration of the State of Montana without first seeking its own competitive bids under the procedures established in Mont. Code Ann. § 7-5-4302?

Mont. Code Ann. § 7-5-4302 originated in legislation first passed in 1907. It sets forth a statutory procedure for the purchase of certain goods and services by municipalities. The legislature recognized the benefits of soliciting competitive bids. The procedure therefore requires advertisement for bids for the goods or services. After advertisement and submission of bids the contract must be let to the “lowest responsible bidder.” This procedure only now applies only to the purchase of goods or services having a value in excess of \$50,000.

In 1983 the legislature enacted Mont. Code Ann. §§ 18-4-401 to -407 establishing an alternative purchasing process. This statute also contains a competitive bidding requirement. In passing this law, the legislature hoped that municipalities and other “local procurement units” would benefit from cooperatively soliciting bids for goods and services with the state and other government units. Presumably the greater collective purchasing power of the units would result in savings for the participating entities. This statute makes no reference to Mont. Code Ann. § 7-5-4302. Accordingly there is no express requirement that a local government engage in a separate competitive advertised bidding process under Mont. Code Ann. § 7-5-4302 before entering into an agreement with the state to make cooperative purchases. The rules of statutory construction prevent the addition of such a requirement if it is not found in the statute itself. Mont. Code Ann. § 1-2-101.

“In the construction of a statute, the intention of the legislature is to be pursued if possible.” Mont. Code Ann. § 1-2-102. This is “[t]he cardinal principle of statutory construction.” Baker Nat’l Ins. Agency v. Montana Dep’t of Revenue, 175 Mont. 9, 15, 571 P.2d 1156, 1160 (1977). When the legislature has expressed its intent more than once in the same subject area, the later enactment generally will prevail over a prior statute in the event of a conflict. State ex rel. Jenkins v. Carisch Theatres, 172 Mont. 453, 458, 564 P.2d 1316, 1319; 1A Sutherland Statutory Construction § 22.22 (6th ed. 2002).

Another rule of statutory construction mandates that “[s]tatutes which are not inconsistent with one another, and which relate to the same subject matter, are in pari materia and should be construed together and effect given to both if it is possible to do so.” Register

Life Ins. Co. v. Kenniston, 99 Mont. 191, 197, 43 P.2d 251, 254 (1935). The Supreme Court “must presume that the legislature would not pass meaningless legislation, and must harmonize statutes relating to the same subject, as much as possible, giving effect to each.” ISC Distribs. v. Trevor, 273 Mont. 185, 201, 903 P.2d 170, 179 (1995).

A final principle is applicable to the question presented: “A statute will not be interpreted to defeat its object or purpose, and the objects sought to be achieved by the legislature are of prime consideration in interpreting it.” Dover Ranch v. County of Yellowstone, 187 Mont. 276, 284, 609 P.2d 711, 715 (1980).

With these concepts in mind, I have reached the following conclusions.

First: The statutes in question are related and address the same subject matter so they must be read together, harmonized and each given effect if possible. The intent of the legislature must be followed if possible. In so doing, the later expression of intent should be given deference.

Second: The object and intention of the legislature in passing the cooperative purchasing statute is unambiguous. The legislature wanted to provide local procurement units, a term that includes municipalities, with the ability to take advantage of the benefits of purchasing jointly with the state. The legislature established the procedures to be followed in Mont. Code Ann. §§ 18-4-401 to -407. The legislature did not repeal the existing municipal purchasing statute. Nor did it require a municipality to first use the competitive bidding steps defined in Mont. Code Ann. § 7-5-4302 and then proceed through the second competitive bidding process required in the cooperative purchasing statute. These facts establish a legislative intent to leave in place two independent, alternative procedures for the purchase of goods and services by municipalities.

Third: There is no inconsistency between the statutes and therefore no need to resolve conflict between them. It is possible to give full effect to each and it is only reasonable and logical to infer a legislative intent to do so.

In 1983 the municipal competitive bidding statute had been in existence for over seventy-five years. The legislature could have repealed the statute or amended it, but it chose to do neither. Instead it passed Mont. Code Ann. §§ 18-4-401 to -407 and thereby expressed its intent that this statute should provide an alternative purchasing procedure available to municipalities. The 1983 act deals with the same subject for municipalities as does Mont Code Ann. § 7-5-4302. The statutes must be harmonized to give as much effect as possible to each. This is accomplished by inferring from the later expression of legislative intent a goal to provide municipalities with two separate alternatives to

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purchase certain goods or services: one defined by Title 7 and the other defined in Title 18. This construction gives full effect to each statute and completely harmonizes the two.

THEREFORE, IT IS MY OPINION:

A municipality may choose to participate in cooperative purchasing with the Department of Administration of the State of Montana pursuant to Mont. Code Ann. §§ 18-4-401 to -407 without first seeking its own competitive bids as an alternative to the competitive bidding requirements set forth in Mont. Code Ann. § 7-5-4302.

Very truly yours,

MIKE McGRATH
Attorney General

mm/je/jym