

June 25, 2004

Mr. Paul J. Luwe  
Bozeman City Attorney  
411 East Main Street  
P.O. Box 1230  
Bozeman, MT 59715-1230

Dear Mr. Luwe:

You requested that this office issue a letter of advice answering the following questions:

Do local governments with general government powers have the authority to impose administrative fees on misdemeanor criminal offenses?

Do local governments with self-government powers have the authority to impose administrative fees on misdemeanor criminal offenses?

I agree with your conclusion that local governments with general or self-government powers have the authority to impose such administrative fees on misdemeanor criminal offenses. I disagree, however, with your reliance on Mont. Code Ann. § 25-30-102 to reach that conclusion.

Municipalities with general government powers have the powers “of a municipal corporation and legislative, administrative, and other powers provided or implied by law.” Mont. Const. art. X, sec. 4. Pursuant to section 4(2), those powers are to be liberally construed. Municipalities with self-government powers “may exercise any power not prohibited by this constitution, law, or charter.”

Title 25, chapter 30, part 1 contains the general provisions governing civil procedure in municipal courts. Section 25-30-102 provides in relevant part:

**Fees and fines--collection.** (1)(a) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

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(b) Fees assessed in municipal court may not exceed the fees authorized to be paid to justice's court in 25-31-112.

Title 25, chapter 31, part 1 contains the general provisions governing civil procedure in Justice Courts and section 25-31-112 outlines the fees that must be paid in every *civil* action filed in justice court. Review of these provisions indicates that section 25-30-102 applies only in the context of civil filings and does not authorize imposition of criminal fees.

However, section 7-1-4123(7) appears to expressly authorize such a fee. It provides:

A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service.

Based on the plain language of this statute, it is my opinion that a municipality with general government powers may impose an administrative fee on misdemeanor criminal offenses. The fee would have to conform to the type of fee contemplated in subsection (7)--for example, any reasonable fee assessed to provide funds for costs related to the administration of city court. I have not reviewed the question of whether any particular ordinance creates a valid fee, and express no opinion here on that question. Given that municipalities with self-government powers have all the powers granted to general power governments this conclusion also applies to those local government units with self-government powers. See Mont. Code Ann. § 7-1-101.

Finally, I agree with your conclusion that the prohibition found in Mont. Code Ann. § 7-1-111(8) against local governments with self-government powers fixing a "penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months imprisonment or both, except as specifically authorized by statute" does not prohibit imposition of an administrative fee on misdemeanor criminal offenses.

Therefore, it is my opinion that local governments with general government or with self-government powers may impose administrative fees on misdemeanor criminal offenses. These fees, however, may only be imposed in addition to *and not* in lieu of surcharges, fees or fines imposed by state statute.

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This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON  
Assistant Attorney General

anb/jym