May 22, 2007

Mr. Greg Chilcott, Chair
Ravalli County Commissioners
Ravalli County Courthouse
Hamilton, MT 59840-2853

Dear Mr. Chilcott:

You have requested an opinion from the Attorney General regarding the principles that govern interpretation of a county regulation adopted by ballot initiative. Since your questions involve application of settled legal principles it has been determined that a letter of advice rather than a formal opinion is appropriate in response to your question.

The principles governing interpretation of local regulations and ordinances are well-established. The Montana Supreme Court has held on several occasions that the rules courts apply in the interpretation of statutes and local government enactments are the same. Mesa Communications Group, LLC v. Yellowstone County, 2002 MT 73, ¶ 14, 309 Mont. 233, 236, 45 P.3d 37, 39 ("The same rules of construction apply to official enactments by county commissioners as apply to the construction of a statute. Under those rules, we look first to the plain meaning of the words used in determining the intent of the enacting entity; only where that intent cannot be determined from the plain meaning of the words used may we go further and apply other means of interpretation. The role of the judge is to 'ascertain and declare what is in terms or in substance contained [in the Regulations], not to insert what has been omitted or to omit what has been inserted.'" (citations omitted)); State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 271, 184 P. 2d 998, 1002 (1947) (same); City of Missoula v. Swanberg, 116 Mont. 232, 233, 149 P.2d 248 (1944) (same). Your district court recently announced the same rule in an opinion applying zoning enactments in your county. Ravalli County v. Citizens for Economic Opportunity, 2006 Mont. Dist. Lexis 843, *39.

Likewise, "The rules applicable to judicial interpretation of initiatives are the same as those applying to legislation enacted by the legislature." State Bar of Montana v. Krivec, 193 Mont. 477, 480, 632 P.2d 707, 710 (1981); accord, State ex rel. Palmer v. DeHart, 201 Mont. 526, 530, 655 P.2d 965, 967 (1982). Thus, the rules of construction apply the same to local laws adopted by initiative and laws adopted by the governing body.

Using these rules, interpretation of a local government initiated measure begins with the language of the enactment. If that language is clear, no further construction is required. Under this circumstance resort to any canons of interpretation is inappropriate. See, e.g., Janow v. Conoco Pipe Line Co., 2000 MT 242, ¶ 9, 301 Mont. 402, 405, 10 P.3d 79, 81. If the language is ambiguous, the canons should be applied thoughtfully to find the interpretation that best effectuates the sense of the statute. See K. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed, 3 Vanderbilt Law Review 395 (1950), reprinted in part in 2A Sutherland, Statutory Construction 539, 542 (5th ed. 1992) (hereafter "Sutherland") ("[T]o make a canon take hold in a particular instance, the construction contended for must be sold, essentially, by means other than the use of the canon: The good sense of the situation and a *simple* construction of the available language to achieve that sense, *by tenable means, out of the statutory language*." (emphasis in the original)). Like many maxims of jurisprudence, some of the canons contradict each other, and no one canon is necessarily superior to another. Id. at 542-45 (listing 28 canons of construction and pairing each with a "parrying" canon of opposite import). Application of the canons requires judgment applied to the facts of the situation to make a reasoned determination of what the language means in a given context.

While administrative interpretation of the statute is one factor, the administrative agency should apply the same rules a court would apply in deciding what the statute means. After all, the agency's interpretation is subject to judicial review, and as the Supreme Court stated in Bay v. State, 212 Mont. 258, 265, 688 P.2d 1, 4 (1984):

> Although we give deference to the interpretation given a statute by the officers or agency charged with its administration, this does not mean that courts must rubberstamp any interpretation the agencies may give a statute. Rules of statutory construction have no application if the language of the statute is clear and unambiguous. It has always been our rule that it is the province of courts to construe and apply the law as they find it and to maintain its integrity as it has been written by a coordinate branch of the state government.

(Citations omitted.)

You inquire whether the views of the initiative proponents are relevant in the interpretation of the initiative. Generally, statements outside the official legislative record are not considered in interpreting a statute. See Montana Wilderness Ass'n v. U.S. Forest Service, 655 F.2d 951, 956 n.8 (9th Cir. 1981), cert denied, 455 U.S. 989 (1982) ("remarks of but one senator made subsequent to the passage of the bill . . . do not provide a reliable indication of the understanding of the Senate as a whole.") Thus, when the meaning of a law is called into question, a sponsor or proponent of the legislation

cannot be called as a witness or submit extra-record evidence to attempt to persuade a tribunal as to how legislation should be interpreted. 2A Sutherland, § 48.16.

Statements submitted to voters as part of the official documents surrounding an initiative can be evidence of the intent of voters, 2A Sutherland, § 48.19, see generally Montanans for the Coal Trust v. State, 2000 MT 13, ¶ 6, 298 Mont. 69, 71, 996 P.2d 856, 857, but such materials can be considered as part of the initiative's legislative history only when the language of the initiative is ambiguous. Dorn v. Board of Trustees, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983). However, in any case, legislative history materials would be only one of many factors considered in determining the meaning of an ambiguous law. They would not necessarily be entitled to controlling effect.

I hope you find this letter of advice helpful. This letter may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym
c: George Corn