

September 19, 2007

Mr. Paul J. Luwe
Bozeman City Attorney
411 E. Main
Bozeman, MT 59771-1230

Re: Fee Schedule for Municipal Courts

Dear Mr. Luwe:

Thank you for your letter inquiring about the fee schedule for Municipal Courts, and whether a city with self-government power may provide for fees in excess of those provided by the Legislature. Because your questions are resolved by reference to statute, it has been determined that an informal letter of advice rather than a formal opinion is an appropriate response.

You are correct in concluding that Municipal Court fees are governed by Mont. Code Ann. § 25-30-102. Subsection (1)(a) of that statute provides that “[t]he fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance.” Subsection (1)(b) states, “[f]ees assessed in municipal court may not exceed the fees authorized to be paid to a justice’s court in 25-31-112.” The schedule of fees for Justice Court is significantly lower than the fees authorized in District Court. Compare, Mont. Code Ann. § 25-31-112 and § 25-1-201.

Because the governing statute specifically addresses Municipal Courts and limits the amount of fees to those authorized in Justice Court, I conclude that the higher fees for District Court outlined in Mont. Code Ann. § 25-1-201 are not generally applicable to Municipal Courts. As you correctly point out, the rules of statutory construction contemplate that the specific statute controls over a more general statute. See State ex rel. D.M.B. v. Thirteenth Judicial District Court, 2004 MT 335, ¶ 9, 324 Mont. 190, 103 P.3d 514; accord, 52 Op. Atty. Gen. Mont. No. 2, ¶ 5.

Your next question is whether a city with self government powers may supersede Mont. Code Ann. § 25-30-102(1)(b) and provide for fees exceeding those authorized for Justice Court. A local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. Mont. Const. art. XI, § 6; Mont. Code Ann. § 7-1-101. As a self-governing local government unit, the city has the authority to “share powers with the state governments.” D & F Sanitation Service v. City of Billings, 219 Mont. 437, 713 P.2d 977, 981-82 (1986). While the shared powers concept does not leave the local government unit free from state control, the concept embodies the “assumption that local government possesses the power, unless it has been specifically denied.” Id., 713 P.2d at 982.

The powers specifically denied to a local government with self-government powers are enumerated in Mont. Code Ann. §§ 7-1-111 and -112. While Mont. Code Ann. § 71-1-111(5) prohibits the exercise of “any power that establishes a rate or price otherwise determined by a state agency,” no state agency is involved here. Nor is the setting of fees for Municipal Courts a power requiring delegation under Mont. Code Ann. § 7-1-112.

Perhaps most compelling to the question of the city’s authority is the language of Mont. Code Ann. § 25-30-102(1)(a), which authorizes fees and fines in Municipal Court. That provision specifically references fees “provided by law or ordinance,” and thus contemplates that a city may set Municipal Court fees by ordinance. While as applied to general power municipalities this means, consistent with the discussion above, that the fees set by ordinance may be less than those provided by statute, nothing in the statute limits its application to that context alone. Mont. Code Ann. § 7-1-113 (1) requires a self-governing municipality to act consistently with state law or administrative regulation only when it acts “in any area affirmatively subjected to state regulation or control.” The same statute defines “affirmatively subjected to state control” to include only those instances in which “a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.” Neither condition is satisfied here. See Lechner v. City of Billings, 244 Mont. 195, 203, 797 P.2d 191, 196 (1990) (charges assessed by municipal utility in self-governing city not affirmatively subjected to state control because no state agency sets the rates by regulation); 45 Op. Att’y Gen. No. 7 (1995) (self-governing city may adopt photo-radar speeding ordinance because no state agency has exclusive power to regulate traffic in cities).

Mr. Paul J. Luwe
September 19, 2007
Page 3

The concept of shared sovereignty embodied in these statutes is premised on the idea that a self-governing municipality is bound by state law only if the few instances specified by the statutes, subject to the overarching regulation of the Constitution. In all other instances the municipality may adopt the policies it deems best suited to its circumstances. Since no statute or constitutional provision denies a self-governing municipality the power to set fees for a Municipal Court it has chosen to establish, it is my opinion that such power is present. This letter of advice may not be cited as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

JENNIFER ANDERS
Assistant Attorney General

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