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Legal Opinion 2017-018

TO: City Council; Mayor Engen; Dale Bickell; Mike Haynes; Ellen Leahy, City County Health; Shannon Therriault, City County Health; Don Verrue

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE June 22, 2017

RE: Montana state law prohibits self-government local governments from exercising any power that applies to or affects landlords when that power is intended to license landlords or to regulate landlord activities with regard to tenants beyond what is provided for in Montana's landlord tenant laws set forth in title 70, chapters 24 and 25, MCA.

FACTS:

Issues have arisen recently that, in part, include expressions of concern pertaining to lack of onsite resident managers at mobile home parks and an interest in what powers a Montana municipality might exercise with respect to management of mobile home parks.

ISSUE(S):

What limitations or restrictions does Montana state law place on Montana local governments exercise of powers with respect to regulating landlord activities with regard to tenants beyond what is provided for by Montana state law in Montana's RESIDENTIAL LANDLORD AND TENANT ACT OF 1977?

CONCLUSION(S):

Section 7-1-111, MCA, entitled "POWERS DENIED", pursuant to subsection 7-1-111(13), MCA, prohibits Montana local governments with self-government powers from exercising any power that applies to or affects landlords when that power is intended to license landlords or to regulate landlord activities with regard to tenants beyond what is provided in title 70, chapters 24 and 25, MCA, which includes Montana's RESIDENTIAL LANDLORD AND TENANT ACT OF 1977. However, other Montana laws appear to provide county government with numerous powers to address operation of mobile home parks or trailer courts.

LEGAL DISCUSSION:

Title 7, chapter 1, part 1 MCA is entitled “NATURE OF SELF-GOVERNMENT LOCAL GOVERNMENTS”. Section 7-1-111, MCA, within that part is entitled “POWERS DENIED”.

Subsection 7-1-111(13) MCA prohibits a local government’s exercise of any powers that applies to or affects landlords when that power is intended to license landlords or to regulate landlord activities with regard to tenants beyond what is provided in Montana’s **RESIDENTIAL LANDLORD AND TENANT ACT OF 1977**. Subsection 7-1-111(13) MCA provides:

7-1-111. POWERS DENIED. A local government unit with self-government powers is prohibited from exercising the following:

...
(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government’s ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government’s jurisdiction.

The statutory definition of the term “Landlord” is set forth in section 70-24-103, MCA. Subsection 70-24-103(7), MCA, defines the term “landlord” as meaning:

70-24-103. GENERAL DEFINITIONS. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

...
(7) ‘Landlord’ means: (a) the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part; or (b) a manager of the premises who fails to disclose the managerial position.

The cross references within subsection 7-1-111(13), MCA, to title 70, chapters 24 and 25 are cross references to Montana’s **RESIDENTIAL LANDLORD AND TENANT ACT OF 1977** (chapter 24) and “**RESIDENTIAL TENANT’S SECURITY DEPOSITS**” (chapter 25).

“Manager” is a word that is utilized to a limited degree in Montana’s **RESIDENTIAL LANDLORD AND TENANT ACT OF 1977**. For example, in section 70-24-301, MCA, entitled “**DUTY TO DISCLOSE NAME OF PERSON RESPONSIBLE**”. Section 70-24-301 MCA states as follows:

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

- (b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.
- (2) The information required to be furnished by this section must be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.
- (3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:
 - (a) service of process and receiving notices and demands; and
 - (b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises. *(Emphasis added)*

Montana's RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 does, to a limited extent, include references to managers but does not require a resident manager reside at locations where multiple dwelling units are being rented or leased.

Subsection 7-1-111(13), MCA, quoted above herein prohibits a local government the exercise of any power that regulates landlord activities with regard to tenants beyond what is provided in Title 70, chapter 24, "RESIDENTIAL AND LANDLORD TENANT ACT OF 1977". Thus, it appears that a Montana local government with self-government powers is prohibited the power to require resident managers. However, there appear to be other Montana state laws that county governments may utilize to address concerns about mobile home park or trailer court management and operations.

Title 70, chapter 33, MCA, is entitled "MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT". Section 70-33-301, MCA is entitled "DUTY TO DISCLOSE NAME OF PERSON RESPONSIBLE" and states:

70-33-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- (a) the person authorized to manage the premises; and
- (b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.
- (2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.
- (3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:
 - (a) service of process and receiving notices and demands; and
 - (b) performing the obligations of the landlord under this chapter and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises. *(Emphasis added)*

Section 70-33-407, MCA, establishes obligations concerning fire or casualty damage to a mobile home that requires its removal. Section 70-33-407, MCA, is entitled “FIRE OR CASUALTY DAMAGE – RIGHTS AND OBLIGATIONS OF TENANT” and states:

70-33-407. Fire or casualty damage -- rights and obligations of tenant.

- (1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.
 - (b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.
 - (2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.
 - (3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and **70-33-430** does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.
 - (4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

Note that section 70-33-430, MCA, is cross referenced to in the above law. It is entitled “DISPOSITION OF ABANDONED PERSONAL PROPERTY”.

Pursuant to the Administrative Rules of Montana (ARM), the County has a number of enforceable standards available to the county that it could pursue in appropriate factual circumstances. For example:

1. **ARM 37.111.216** a trailer court sewage system is deemed failed and requires repair if it fails to accept sewage as designed.
2. **ARM 37.111.217 and 218** sets forth provisions requiring the owner and manager to ensure proper storage, collection and disposal of solid waste and prevent the accumulation of litter/rubbish/debris or burnable materials.
3. **ARM 37.111.220** requires that the owner provide adequate supervision to maintain the trailer court and keep its facilities in good repair and in a clean and sanitary condition and also requires that a manager be on duty to maintain the trailer court in accordance with ARM and MCA and visit the trailer court as often as necessary to ensure that the requirements are met.

Title 50, chapter 52, MCA, is entitled “TOURIST CAMPGROUNDS AND TRAILER COURTS”. Section 50-52-104, MCA, provides that the county attorney shall prosecute violations of Title 50, chapter 52, stating:

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

Section 50-52-102, MCA, authorizes the Montana Department of Public Health and Human Services to adopt rules for constructing and operating trailer courts. The ARMs are the rules that Montana state agencies adopt to assist with the implementation of various state laws.

Also, section 50-52-106, MCA, authorizes the Montana Department of Health and Human Services or a local board of health to petition the District Court for an injunction to enjoin any action that is a violation of Title 50, chapter 52 or any rule that has been adopted.

CONCLUSION(S):

Section 7-1-111, MCA, entitled “POWERS DENIED”, pursuant to subsection 7-1-111(13), MCA, prohibits Montana local governments with self-government powers from exercising any power that applies to or affects landlords when that power is intended to license landlords or to regulate landlord activities with regard to tenants beyond what is provided in title 70, chapters 24 and 25, MCA, which includes Montana’s RESIDENTIAL LANDLORD AND TENANT ACT OF 1977. However, other Montana laws appear to provide county government with numerous powers to address operation of mobile home parks or trailer courts.

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