

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2017-022

TO: Mayor Engen; Dale Bickell; Mike Haynes; Charmell Owens; Long Moua; Don Verrue; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 11, 2017

RE: Montana local governments may not impose a tax, fee, require a license or impose any operational requirements on passenger transportation network carrier services.

FACTS:

A couple of times in recent months, there has been some city staff inquiry pertaining to city authority or power to regulate passenger carrier services, such as UBER or the passenger carrier service that was transporting people to and from the testicle festival from Missoula to Rock Creek and back last weekend.

ISSUE(S):

May local governments in Montana impose a tax or fee, require a license for or impose operational requirements on a passenger carrier service?

CONCLUSION(S):

Montana state motor carrier law provides that the Montana Public Service Commission is statutorily responsible for the supervision and regulation of motor carrier services in all matters affecting the traveling public in Montana. Montana motor carrier law also expressly states that a Montana local government “may not impose a tax or fee on, require a license for, or impose any other operational requirements on transportation network carrier services.”.

LEGAL DISCUSSION:

Montana state law section 69-12-201, MCA, provides that the Montana Public Service Commission has the power, authority and duty to supervise and regulate every motor carrier in Montana as well as supervise and regulate motor carriers in all matters affecting the relationship between motor carriers and the traveling public.

Subsection 69-12-101 MCA(12) MCA defines the term “motor carrier as meaning:

“(12) ‘Motor carrier’ means a person or corporation or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. A motor carrier includes a transportation network carrier.” (*Emphasis added*)

A “transportation network carrier” and “transportation network service carrier” are defined in subsections 69-12-101(20) & (23) MCA as meaning:

“(20) “Transportation network carrier” means an entity that uses a digital network or software application service to connect passengers to transportation network carrier services provided by transportation network carrier drivers. A transportation network carrier may not be deemed to control, direct, or manage the personal vehicles or transportation network carrier drivers that connect to its digital network, except where agreed to by written contract.” (*Emphasis added*)

“(23) ‘Transportation network carrier services’ means the transportation of a passenger between points chosen and prearranged with a transportation network carrier driver through the use of a transportation network carrier digital network or software application.” (*Emphasis added*)

Section 69-12-342 MCA is entitled “AUTHORITY”. Section 69-12-342 MCA states:

“69-12-342 AUTHORITY. (1) Notwithstanding any other provision of law, transportation network carrier services are exclusively governed by this chapter and rules promulgated by the commission consistent with this chapter. (2) a local government as defined in 2-2-102 may not impose a tax or fee on, require a license for, or impose any other operational requirements on transportation network carrier services.” (*Emphasis added*)

Subsection 2-2-102(4) MCA defines the term “local government” as meaning:

“(4) ‘Local government’ means a county, a consolidated government, an incorporated city or town, a school district, a special district.”

It should also be noted that section 7-1-111, MCA, entitled “POWERS DENIED” pertaining to Montana local governments with self-government powers provides pursuant to subsection 7-1-111(4) MCA that:

“7-1-111 POWERS DENIED. A local government unit with self-government powers is prohibited from exercising the following: . . . (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of

public convenience and necessity pursuant to Title 69, chapter 12.” (*Emphasis added*)

Title 69, chapter 12 MCA is entitled “MOTOR CARRIERS”.

CONCLUSION(S):

Montana state motor carrier law provides that the Montana Public Service Commission is statutorily responsible for the supervision and regulation of motor carrier services in all matters affecting the traveling public in Montana. Montana motor carrier law also expressly states that a Montana local government “may not impose a tax or fee on, require a license for, or impose any other operational requirements on transportation network carrier services.”.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:ajg