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Legal Opinion 2018-009

TO: City Council; Mayor John Engen; Dale Bickell; Ginny Merriam; Marty Rehbein; Kirsten Hands; Kelly Elam; Mike Haynes; Don Verrue; Denise Alexander; Mary McCrea; Laval Means

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE March 27, 2018

RE: Montana state law prohibits a Montana local government from exercising any power that affects landlords with respect to either licensing of landlords or regulating activities of landlords with regard to tenants beyond what exists in Montana's Residential Landlord and Tenant Act of 1977 set forth in title 70, chapter 24 and 25 Montana Code Annotated.

FACTS:

Monday evening, March 26, 2018, during public comment on non-agenda topics during the Missoula City Council meeting, citizens provided comment expressing concerns about residential landlord's rental conduct with apparent expectation that the Missoula City Council might be able to address the concerns that were being expressed.

ISSUE(S):

Does Montana state law prohibit Montana local governments, with self-government powers, from exercising power that applies to or affects residential landlords when that power is intended to either license landlords or regulate landlord activities?

CONCLUSION(S):

Yes, Montana state law, pursuant to statutorily identified powers denied to Montana local governments, prohibits a Montana local government with self-government powers from exercising any power that applies to or affects residential landlords when that power is intended to either license landlords or regulate landlord activities with regard to residential tenants beyond what Montana's Residential Landlord and Tenant Act of 1977 as well as Montana's "Residential Tenants' Security Deposits" law provide. See MONT. CODE ANN. § 7-1-111(13).

LEGAL DISCUSSION:

The Montana State Legislature has affirmatively subjected residential landlords and tenants to Montana state regulation or control. “The Montana Residential Landlord and Tenant Act of 1977” is set forth in title 70, chapter 24 Montana Code Annotated. Also, the Montana State Legislature has enacted state legislation addressing residential tenants’ security deposits, Montana’s “Residential Tenants’ Security Deposits” law is set forth in title 70, chapter 25 Montana Code Annotated.

The Montana State Legislature has also enacted four substantively significant provisions of Montana State law that extensively limit or restrict the powers of Montana local governments with self-government powers. These four substantively significant provisions of Montana state law restricting and limiting the powers of Montana local governments with self-government powers are:

- (1)“POWERS DENIED”; MONT. CODE ANN. § 7-1-111.
- (2)“POWERS REQUIRING DELEGATION”; MONT. CODE ANN. § 7-1-112.
- (3)“CONSISTENCY WITH STATE REGULATION REQUIRED”; MONT. CODE ANN. § 7-1-113.
- (4)“MANDATORY PROVISIONS”. MONT. CODE ANN. § 7-1-114.

Pursuant to subsection 7-1-111(13), MCA, Montana local governments with self-government powers are denied the exercise of any power that applies to or affects landlords when that power is intended to either license landlords or to regulate landlord activity with regard to tenants beyond what “The Montana Residential Landlord and Tenant Act of 1977” or Montana’s “Residential Tenants’ Security Deposits” laws provide for.

Subsection 7-1-111(13) MCA provides:

“7-1-111 POWERS DENIED. A local government 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.”

As previously noted herein, title 70, chapter 24 that is cross referenced to is the “Montana Residential Landlord and Tenant Act of 1977” and title 70, chapter 25 is Montana’s “Residential Tenants’ Security Deposits” state law.

Also, the cross reference to the definition of “landlord” set forth in subsection 70-24-103 MCA is a cross reference to a provision of the “Montana Residential Landlord and Tenant Act of 1977”. Subsection 70-24-101(7) MCA defines the term “landlord” as meaning:

“(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.”

CONCLUSION(S):

Yes, Montana state law, pursuant to statutorily identified powers denied to Montana local governments, prohibits a Montana local government with self-government powers from exercising any power that applies to or affects residential landlords when that power is intended to either license landlords or regulate landlord activities with regard to residential tenants beyond what Montana’s Residential Landlord and Tenant Act of 1977 as well as Montana’s “Residential Tenants’ Security Deposits” law provide. See MONT. CODE ANN. § 7-1-111(13).

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/s/

Jim Nugent, City Attorney

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