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Legal Opinion 2019-011

TO: City Council, Mayor John Engen, Dale Bickell, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Mike Brady, Scott Hoffman, Department Attorney

FROM: Jim Nugent, City Attorney

DATE April 26, 2019

RE: Generally Montana state law limits the maximum fine a municipality may impose for a misdemeanor offense to a maximum of \$500.00, except for ordinances relating to federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act for which a maximum fine of \$1,000.00 may be established.

Facts:

Reportedly citizens are requesting that the City Council consider enacting an ordinance prohibiting self-service displays of tobacco products and the sale of flavored tobacco products in stores, except in adult only tobacco retailers. The initial draft ordinance submitted for City of Missoula review proposed fine penalties that exceeded the authority of the maximum fines that Montana municipalities may impose for fine penalties.

ISSUE:

Generally, what is the maximum fine penalty that a Montana municipality may impose for a misdemeanor ordinance violation?

CONCLUSION:

Pursuant to several sections of Montana state law, the maximum fine penalty that a Montana municipality may impose for a misdemeanor ordinance violation is \$500.00; except for ordinance violations relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act.

LEGAL DISCUSSION:

At least three provisions of Montana state municipal government law generally provide that the maximum fine penalty that may be imposed for a misdemeanor ordinance violation is \$500.00. These three sections of Montana municipal government law are as follows:

(1) Section 7-1-111 MCA entitled POWERS DENIED. Subsection 7-1-111(8) MCA states:

“7-1-111 POWERS DENIED” A local government unit with self-government powers is prohibited from exercising the following: (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months’ imprisonment, or both, except as specifically authorized by statute.”

(2) Section 7-5-109. MCA PENALTY FOR VIOLATION OF ORDINANCE states:

“7-5-109. PENALTY FOR VIOLATION OF ORDINANCE. (1) Except as provided in 7-5-4209 and subsection (2) of this section, a local government may fix penalties for the violation of an ordinance that do not exceed \$500 or 6 months’ imprisonment or both the fine and imprisonment. (2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed \$1,000 per day for each violation or 6 months’ imprisonment or both.

(3) Section 7-5-4207. PENALTIES FOR VIOLATION OF MUNICIPAL ORDINANCES states:

“7-5-4207. PENALTIES FOR VIOLATION OF MUNICIPAL ORDINANCES. (1) Except as provided in 7-5-4209 and subsection (2) of this section, the city or town council may impose fines and penalties for violation of any city ordinance, but a fine or penalty may not exceed \$500 and imprisonment may not exceed 6 months for any one offense. (2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U. S. C. 1251 through 1387, if the penalties do not exceed \$1,000 per day for each violation or 6 months’ imprisonment, or both.

Section 7-5-4209 MCA which is cross referenced to within both sections 7-5-109 and 7-5-4207 MCA is entitled “SOCIAL HOST ORDINANCES FINING LANDLORDS PROHIBITED-MAINTAINING LISTS FOR ENFORCEMENT PROHIBITED. Subsection 7-5-4209 (1) provides in pertinent part that a social host ordinance enacted by a municipality may not fine the landlord of the property.

An additional municipal monetary maximum fine to be aware of is the maximum \$300.00 fine for a first offense of a municipal infraction if a municipality were to enact a civil penalty municipal infraction ordinance for fines for its ordinance violations. Pursuant to subsection 7-1-4150(1) MCA the maximum civil penalty for a first offense is \$300.00 and repeat offenses may be fined up to \$500. With respect to prosecutor burdens of proof, misdemeanor ordinance violations are to be proven beyond a reasonable doubt. Municipal infractions are to be proven by clear and convincing evidence. See subsection 7-1-4151(1)(b) MCA.

CONCLUSION:

Pursuant to several sections of Montana state law, the maximum fine penalty that a Montana municipality may impose for a misdemeanor ordinance violation is \$500.00; except for ordinance violations relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act.

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/s/ Jim Nugent

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