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Legal Opinion 2022-012

TO: City Council, Mayor John Engen, Dale Bickell, Leigh Griffing, Eric Hallstrom
CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 9, 2022

RE: MONTANA STATE LEGISLATURE MUST DELEGATE ANY POWER TO
AUTHORIZE A MONTANA LOCAL GOVERNMENT TAX ASSESSMENT.

FACTS:

Pursuant to Montana state law, it is municipal government budget review and adoption time. There are four new city council members and there might be some inquiries or suggestions for new local government taxes.

ISSUE(S):

May a Montana municipal government create new kinds of tax assessments to raise income?

CONCLUSION(S):

Montana local government tax powers must be authorized or delegated to the local government by the Montana State Legislature.

LEGAL DISCUSSION:

Montana local government self-government law pursuant to Section 7-1-112 MCA entitled POWERS REQUIRING DELEGATION, is prohibited the exercise of the power to tax income or the sale of goods or services unless specifically authorized or delegated by law by the Montana State Legislature.

The City of Billings has lost at least three (3) cases at the Montana Supreme Court involving their attempt to create a local government fee or tax. These Montana Supreme Court decisions are:

- (1) Invalidated a fee for occupancy of motel rooms because the fee constituted a sales tax. Montana Innkeepers Association v. Billings, 206 M 425, 671 P 2d 21(1983);
- (2) A city gross revenue franchise fee on facilities using public right of way was an illegal tax. Montana Dakota Utilities Co. v. City of Billings 2003 Mt. 332, 80 P. 3d 1247(2003);
- (3) Tax on sale of attorney services was invalid. Brueggemann v. City of Billings, 221 M 375, 719 P 2d 769(1986).

CONCLUSION(S):

Montana local government tax powers must be authorized or delegated to the local government by the Montana State Legislature.

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/s/ Jim Nugent

Jim Nugent, City Attorney

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