

2008-013

TO: Mayor John Engen, City Council, Bruce Bender, CAO; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk; Ellen Leahy, City-County Health Department; Jim Carlson, City-County Health Department

FROM: Jim Nugent, City Attorney

DATE October 28, 2008

RE: City's extraterritorial health powers

FACTS:

Twice this month the issue of the city's extraterritorial health powers has arisen with respect to proposed ordinance amendments. One discussion pertained to garbage and bear proof garbage cans in certain areas of the city and possibly extraterritorially. The other pertains to the discussion about amending the water quality district ordinance with respect to the ingredients utilized on icy and snowy city streets and possibly beyond during the months when ice and snow are on the Missoula area roadways.

ISSUES:

(1) Do Montana municipalities have extraterritorial powers with respect to health and quarantine powers and if extraterritorial powers exist how far from the municipality does that power extend?

(2) Currently who must approve any extraterritorial health or quarantine ordinance?

CONCLUSIONS:

(1) Pursuant to section 7-4-4306 MCA a mayor by ordinance may exercise health and quarantine powers in and over all places within 5 miles of the boundaries of the city.

(2) Pursuant to section 7-4-4306 MCA for extraterritorial health power in addition to the city council approving and adopting health and quarantine ordinances providing extraterritorial powers, the board of county commissioners of the county affected by any city health and quarantine ordinance and the local health board in the area affected by extraterritorial health and quarantine ordinances shall approve each such extraterritorial ordinance by majority vote.

LEGAL DISCUSSION:

Title 7, chapter 4, part 43 MCA sets forth several Montana state statutes pertaining to the “Office of Mayor”. Within this statutory part is section 7-4-4306 MCA pertaining to extraterritorial powers” section 7-4-4306 MCA provides:

7-4-4306. Extraterritorial powers. The mayor has power to exercise the power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations of the city or town. The board of county commissioners of the county affected by the ordinance and the local health board, if a local health board exists in the area affected by the ordinance, shall approve the ordinance by a majority vote. (Emphasis added.)

Pursuant to section 7-4-4603 MCA municipal government health and quarantine extraterritorial powers may exist within and beyond the city limits within five (5) miles of the boundaries of the city pursuant to city ordinance approved and adopted by the city council and also with approval of both the board of county commissioners and local health board.

While section 7-4-4603 MCA does not define “health”, subsection 50-1-101(2) MCA pertaining to the administration of Montana’s public health laws does define the term “condition of public health importance” as meaning:

“(2) ‘Condition of public health importance’ means a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.”

However, the health power is not unlimited. Pursuant to 42 A. G. Op. 8 (1987) the Montana Attorney General held that a City of Missoula ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to a mayor pursuant to section 7-4-4306 MCA. Montana Attorney General Mike Greely stated at page 5 of his opinion,

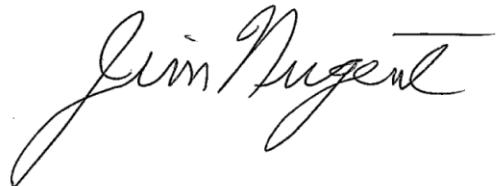
“. . . that the term ‘public health’ relates to matters such as sanitation and the control of communicable diseases rather than the prevention of traumatic personal injury resulting from the discharge of firearms. Because the mayor’s extraterritorial power under section 7-4-4306, MCA, does not extend to matters of safety as distinguished from health, I conclude that the ordinance in question may not be enforced as a health ordinance beyond the city limits. This opinion should not be read to mean that the city is without authority to regulate the discharge of firearms outside the city limits. Section 7-32-4302, MCA, gives the city council the express power to prevent and punish disorderly conduct within three miles of the city limits. As mentioned above, discharging a firearm is one of the statutorily enumerated acts which may disturb the peace and constitute the offense of disorderly conduct. Section 45-8-101(1)(d) MCA.”

CONCLUSIONS:

(1) Pursuant to section 7-4-4306 MCA a mayor by ordinance may exercise health and quarantine powers in and over all places within 5 miles of the boundaries of the city.

(2) Pursuant to section 7-4-4306 MCA for extraterritorial health power in addition to the city council approving and adopting health and quarantine ordinances providing extraterritorial powers, the board of county commissioners of the county affected by any city health and quarantine ordinance and the local health board in the area affected by extraterritorial health and quarantine ordinances shall approve each such extraterritorial ordinance by majority vote.

OFFICE OF THE CITY ATTORNEY

A handwritten signature in black ink that reads "Jim Nugent". The signature is fluid and cursive, with a long, sweeping line on the left and more compact loops on the right.

Jim Nugent, City Attorney

JN:mdg
cc: Legal Staff