

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2013-015

**TO:** Mayor John Engen, City Council, Bruce Bender, Mark Muir, Mike Brady, Chris Odlin, Mike Colyer, Scott Hoffman

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** July 23, 2013

**RE:** Montana Municipalities' lack of power to make non-wearing of a seatbelt a primary offense.

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### **FACTS:**

An inquiry has been received as to whether a Montana Municipality could make not wearing a seat belt a primary offense.

### **ISSUE(S):**

May a Montana Municipality make not wearing a seat belt a primary offense?

### **CONCLUSION(S):**

No, it is not legal for a Montana Municipality to pass an ordinance making non-wearing of a seat belt a primary offense.

### **LEGAL DISCUSSION:**

Subsection 7-1-113(1) MCA of Montana's general laws pertaining to local governments with self government powers provides that:

**7-1-113. Consistency with state regulation required.** (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. (Emphasis Added)

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is

directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency. (emphasis added)

Also, section 61-12-101 MCA of Montana's motor vehicle regulations provides pursuant to subsection 61-12-101(14) MCA that local governments have reasonable exercise of the police power with respect to regulating operators of vehicles as long as the city ordinance regulations "ARE NOT IN CONFLICT WITH STATE LAW OR FEDERAL REGULATIONS". (emphasis added) This subsection of Montana state law states:

**61-12-101. Powers of local authorities to regulate traffic.** The provisions of chapters 8 and 9 do not prevent local authorities with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating the traffic by means of police officers or traffic control devices;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway, as defined in [61-8-341](#), and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in [61-8-102](#), as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;
- (7) restricting the use of highways as authorized in [61-10-128\(2\)](#);
- (8) regulating the operation of bicycles, as defined in [61-8-102](#), and requiring the registration and licensing of bicycles, including requiring a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
- (10) altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;
- (11) regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;
- (12) regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;
- (13) regulating or prohibiting the operation of a vehicle by a person in willful or wanton disregard for the safety of persons or property within the incorporated limits of a city or town;
- (14) enacting as ordinances any provisions of chapter 8 or 9 and any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinances;
- (15) regulating the operation of motorized nonstandard vehicles on sidewalks, streets,

and highways; and

(16) regulating the operation of golf carts on streets and highways. (emphasis added)

The Montana State Legislature has established seatbelt laws and regulations pursuant to the "MONTANA SEATBELT USE ACT" set forth in title 61, chapter 13, part 1, MCA. Generally, pursuant to subsection 61-13-103(4) MCA of this Act, the Montana State Legislature has specifically provided that the department of justice or its agent may not stop a driver in violation of the "MONTANA SEATBELT USE ACT" except, if the driver has violated another traffic regulation.

**61-13-103. Seatbelt use required -- exceptions.** (1) A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt or, if [61-9-420](#) applies, is properly restrained in a child safety restraint.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in [37-8-102](#), that the occupant is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle or a motor-driven cycle;

(d) an occupant of a vehicle licensed as special mobile equipment; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except:

(a) upon reasonable cause to believe that the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law; or

(b) if a person in the vehicle who is under 6 years of age and weighs less than 60 pounds is not properly restrained under [61-9-420](#) or this section. (Emphasis Added)

Section 61-9-420 MCA that is cross referenced to in subsection 61-13-103(4) MCA above is entitled "CHILD SAFETY RESTRAINT SYSTEMS-STANDARDS-EXEMPTIONS.".

**61-9-420. Child safety restraint systems -- standards -- exemptions.** (1) If a child under 6 years of age and weighing less than 60 pounds is a passenger in a motor vehicle, that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained. The child safety restraint must be appropriate for the height and weight of the child as indicated by manufacturer standards.

(2) The department shall by rule establish standards in compliance with [61-9-419](#) through [61-9-423](#) and applicable federal standards for approved types of child safety restraint systems.

(3) The department may by rule exempt from the requirements of subsection (1) a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint.

Thus, for the legal reasons set forth herein above, Montana Municipalities could not legally adopt and enforce a municipal ordinance making non-wearing of a seat belt a primary offense. The city council could adopt a resolution urging the Montana State Legislature to do so.

**CONCLUSION(S):**

No, it is not legal for a Montana Municipality to pass an ordinance making non-wearing of a seat belt a primary offense.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:tfa