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Legal Opinion 2019-004

TO: Mayor John Engen, City Council, Dale Bickell, Eran Pehan, Ellen Buchanan, Chris Behan, Mike Haynes, Denise Alexander, Mary Mccrea, Ginny Merriam, Leigh Griffing, Steve Johnson, Marty Rehbein, Kirsten Hands, Department MRA, Department City Attorney

FROM: Jim Nugent, City Attorney

DATE February 26, 2019

RE: Montana local governments prohibited from exercising any power applying to or affecting licensing of landlords or regulating landlord activities with regard to tenants beyond what Montana's Residential Landlord Tenant Act provides for.

FACTS:

Recently there have been inquiries about the Missoula City Council's ability to attempt to adopt ordinances pertaining to landlords with respect to residential rental relationships.

ISSUE:

Does a Montana local government have power to regulate landlord licensing or relationship activities between landlords and tenants?

CONCLUSION:

No. Montana state local government law prohibits Montana local governments from exercising any power that attempts to license landlords or regulate landlord activities with regard to tenants beyond what is provided in The Montana's Residential Landlord and Tenant Act.

LEGAL DISCUSSION:

Montana state law sets forth "The Montana Residential Landlord and Tenant Act of 1977" in sections 70-24-101 through 70-24-442 MCA. This law is approximately sixteen (16) pages long as codified in the Montana Code Annotated. Montana state law in title 70, chapter 25 MCA entitled "RESIDENTIAL TENANTS SECURITY DEPOSITS" sets forth in sections 70-25-101 through 70-25-205 MCA state laws pertaining to residential tenant's security deposits.

Montana Code Annotated title 7 is entitled "LOCAL GOVERNMENT". Chapter 1 sets forth general provisions of Montana state law pertaining to Montana local governments. Part 1 of chapter 1 is entitled "NATURE OF SELF-GOVERNMENT LOCAL GOVERNMENTS" Section 7-1-111 MCA is entitled "POWERS DENIED".

Subsection 7-1-111(13) MCA enacted in 2001 pertains to residential landlords and states:

“POWERS DENIED. A local government unit 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 RESPECT 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.” (emphasis added)

The general composition of title 70, chapters 24 and 25 MCA that are cross referenced to within this subsection are identified in the first paragraph of this legal opinion.

The section 70-24-103 MCA definition of “landlords” that is cross referenced to is set forth in subsection 70-24-103(7) MCA and states:.

“(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:

No. Montana state local government law prohibits Montana local governments from exercising any power that attempts to license landlords or regulate landlord activities with regard to tenants beyond what is provided in The Montana’s Residential Landlord and Tenant Act.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:jb