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Legal Opinion 2010-004

TO: John Engen, Mayor; Bruce Bender; Mark Muir; Mike Brady; Chris Odlin; Gregg Willoughby; Scott Hoffman; Marty Rehbein; Nikki Rogers; Kelly Elam; City Council

CC: Dept. Attorney

FROM: Jim Nugent

DATE: March 3, 2010

RE: Statutory Limits on Maximum Fines Imposed by Municipalities for City Ordinance Violations

FACTS:

There have been recent inquiries from both, city officials and public citizens as well as discussion pertaining to the maximum fine a Montana municipality may impose for a city ordinance violation.

ISSUE(S):

Does Montana state law impose maximum fine limits as to what a person may be charged for violating a municipal ordinance?

CONCLUSION(S):

Yes, three Montana statutory provisions establish a maximum municipal ordinance fine of \$500.00; the only Montana statutory exception being for local federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387.

LEGAL DISCUSSION:

There are basically three (3) Montana state municipal government laws pertaining to the maximum fine penalty that a municipal government may impose on a violation of a municipal ordinance. Section 7-5-109 MCA provides:

7-5-109. Penalty for violation of ordinance. (1) Except as provided in subsection (2), a local government may fix penalties for the violation of an ordinance that do not exceed a fine of \$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. (Emphasis added.)

Also, §7-5-4207 MCA provides:

75-5-4207. Penalties for violation of municipal ordinances. (1) Except as provided in subsection (2), the city or town council may impose fines and penalties for the 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. (Emphasis added.)

Further, §7-1-111 entitled "Powers denied" provides:

"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. (Emphasis added.)

CONCLUSION(S):

Yes, three Montana statutory provisions establish a maximum municipal ordinance fine of \$500.00; the only Montana statutory exception being for local federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387.

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JN:jlw