MONTANA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Montana Constitution

- MONT. CONST. art. XI. § 6. Self-government powers.

A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Montana Statutes

- MONT. CODE ANN. § 7-1-106 (2016). Construction of self-government powers.

The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

- MONT. CODE ANN. § 7-1-113 (2016). 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.
(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.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Montana's constitution, adopted in 1972, adopts a paradigmatic "legislative" approach to home rule, like other state constitutions of its time. The provision cited above allows a local government to do anything consistent with its charter that is not otherwise prohibited by state

law or constitution.[1] The Montana legislature has further clarified that all doubts about local authority shall be resolved in favor of the local government, thus abolishing Dillon's Rule.[2]

Montana's article XI, § 6 contains no requirement that the laws preempting local authority be "general" or "uniform." Hence, the state's power to preempt, at least if done expressly, appears absolute.

In determining whether preemption has occurred, the Montana courts purport not to apply the doctrine of implied preemption.[3] The courts look to the language of the statutes governing the area of regulation at issue to determine if there has been an express prohibition against local governments regulating in such area.[4] At the same time, however, Montana Code § 7-1-113 establishes limits on local authority that would seem to justify a finding of implied preemption in certain instances. Moreover, the Montana Supreme Court held that the constitutional authority of the Supreme Court to regulate attorneys impliedly preempted a city ordinance requiring all persons, firms, associations or corporations carrying on a business in the city to apply for a general business license.[5]

[1] *See* D & F Sanitation Serv. v. City of Billings, 713 P.2d 977, 982 (Mont. 1986) (noting that 1972 Montana constitution "grants local governments, which formerly had only such powers granted to them, the authority to share powers with the state government").
[2] *See* State ex rel. Swart v. Molitor, 621 P.2d 1100, 1104 (Mont. 1981) (citing MONT. CODE ANN. § 7-1-106).
[3] *D & F Sanitation Service*, 713 P.2d at 982 ("The doctrine of implied pre-emption, by definition, cannot apply to local governments with self-government powers.") (*citing* Tipco Corp., Inc. v. City of Billings, 642 P.2d 1074 (Mont. 1982)).
[4] *Id.* at 982.
[5] Harlen v. City of Helena, 676 P.2d 191, 194 (1984).