

6/30/2011 TC checked MCA 76-2-402

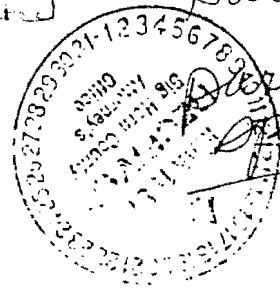
Law has not been updated since 1981

Hardin

STATE OF MONTANA

ATTORNEY GENERAL MIKE GREELY

JUSTICE BUILDING, 215 N. SANDEPS, HELENA, MONTANA 59620 TELEPHONE (406) 444-2026



16 March 1987

James Yellowtail
Big Horn County Attorney
Big Horn County Courthouse
Hardin MT 59034

Dear Mr. Yellowtail:

You have asked my opinion as to whether section 76-2-402, MCA, prevents the application of a city zoning ordinance to the use of county property. Your letter explains that the Big Horn County Library, which is located in Hardin, Montana, intends to expand its existing facility. Hardin's zoning regulations require that when an existing library is enlarged, a certain number of off-street parking spaces must be provided. § 11-1-7-2, Hardin City Code. However, the county library has no off-street parking at present, and does not wish to furnish any as part of its plan to expand.

Section 76-2-402, MCA, deals with the application of local zoning regulations to "agencies."

76-2-402. Local zoning regulations - application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

- (1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.
- (2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

"Agencies" are defined in section 76-2-401(1), MCA, to include all entities of state and local government, including, for example, county libraries.

Although section 76-2-402, MCA, requires that a public hearing be held when an agency intends not to follow

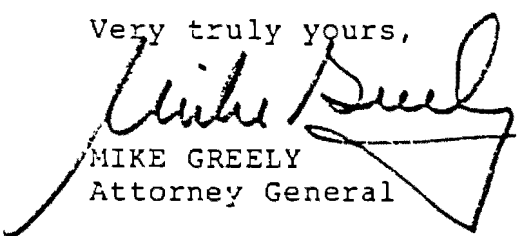
James Yellowtail
Page 2
16 March 1987

local zoning regulations, subsection (2) clearly permits the agency to disregard the zoning regulations once the hearing has been held.

The legislative history of section 76-2-402, MCA, is instructive. The statute was enacted in 1981 as House Bill 594. The minutes of the House and Senate Local Government Committees reflect that House Bill 594, as initially drafted, subjected government agencies to local zoning laws. However, after hearings were held on the bill, its original language was modified, striking the requirement that agencies conform to local zoning regulations and inserting instead that agencies be subject to public hearings. Senate Journal 1243 (1981). See also Minutes of the House Local Government Committee, February 10, 1981, at 4-10 and the Senate Local Administration Committee, March 12, 1981, at 2-4.

It is clear from the language of section 76-2-402(2), MCA, as well as its legislative history, that the Legislature did not intend that governmental entities be subject to local zoning regulations. Therefore, I conclude that the Big Horn County Library is not required to provide off-street parking pursuant to section 11-1-7-2, Hardin City Code.

Very truly yours,


MIKE GREELY
Attorney General