



## Municipal Officials Handbook, Page 17-20

### General vs. Self-Government Powers

A municipality's governing power is its authority to act in order to carry out the lawful functions of a municipal government. In Montana, a municipality's authority to exercise governing power is derived from: (1) the state constitution; (2) enabling legislation; (3) a voter approved self-government charter; and (4) the interpretation of these sources of authority by the courts and by the opinions of the state's attorney general.

#### 1.403 General Government Powers

Article XI, section 4 of the 1972 constitution provides that municipalities with *general powers*, (i.e. all of those municipalities that lack *self-government powers*) have the powers of a municipal corporation and other powers provided or implied by law, which is to say only those powers delegated to municipalities by the state legislature.

Montana law (7-1-4123 and 4124, MCA) specifies the governing powers that may be exercised by a municipal government with *general powers* and which enable any municipal government to protect the public health, safety and welfare within their community. The statutes also provide that a *general powers* municipality may perform any function or provide any service *authorized or required by state law* and may exercise any power *authorized by state law*. The effect of this language is *to limit the governing powers of a general powers municipal government to those powers explicitly delegated to it by the state legislature or necessarily implied incident to such delegation*.

This limitation on the exercise of local governing powers is often cited as "Dillon's Rule", which is derived from the 1872 writings of Iowa Judge John F. Dillon whose narrow construction of local governing powers has been widely adopted by state and federal courts. In short, a *general powers municipal government* in Montana may exercise only those governing powers made available to the municipal government by the state legislature or reasonably implied or necessary to implement a legislatively delegated power. *If the state legislature has not delegated the power to provide a service or perform a governmental function, a municipal government with general powers is not authorized to do so.*

#### 1.404 Self-Government Powers

Article XI, section 6, of the 1972 constitution provides that a local government, which adopts a self-government charter may exercise any power not prohibited by this constitution, law or charter.

At first reading by a municipal official, this sweeping constitutional grant of *any power not prohibited* to a self-governing municipality would appear to reverse “Dillon’s Rule” and with it the municipality’s dependence upon a specific legislative grant of governing authority to perform some function or exercise some power. Such an interpretation would be perilous. The governing reality is that the Montana State Legislature has found it appropriate to *prohibit* the exercise of a very broad range of governing powers, even by a self-governing municipality. *In general, these legislatively imposed prohibitions are set forth explicitly in law at 7-1-111 through 7-1-114, MCA, which, in aggregate, significantly diminish the substance of local self-governing authority.*

Notwithstanding the prohibitions noted above, possession of self-government powers may well enable a municipality to act in the best interests of its citizens under circumstances where a *general powers* government would not be able to act. For example and because they possess self-government powers, Billings was enabled to expand its solid waste service area; Great Falls gained greater authority to dispose of public lands; Helena and Billings were able to implement local development fees; Anaconda-Deer Lodge altered its organizational structure; Libby and Troy were enabled to develop and operate an electric utility; and the Attorney General recently decided that Butte-Silver Bow’s self-government powers enabled it to acquire and operate electric and natural gas utilities within and outside the boundaries of its jurisdiction.

The availability of self-government powers to a municipal government will not, in and of itself, solve community problems or improve local government performance. At best, self-government powers will *enable* a community and its local government to become more effective participants in their own problem-solving and governing processes.

#### **1.405 Acquiring Self-Government Powers**

*A municipal government may acquire self-government powers only with the approval of a majority of the municipal electors voting on the question.* The question may be presented to the local electorate directly as a ballot proposal to adopt self-government powers, or indirectly as a ballot proposal to adopt a municipal charter, which, if approved by the voters automatically confers self-government powers upon the municipality. See Section 1.303 above for the specific requirements to alter or amend the plan of government.

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