

KENNETH D. PETERSON

ATTORNEY AT LAW

424 48th Street West • BILLINGS, MONTANA 59106 • PHONE: (406) 534-2376 • (406) 591-2608 (Cell) • Email kenneth59@bresnan.net

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Honorable Mayor and City Council, City Administrator and City Attorney
City of Billings Montana
210 N. 27th St.
P.O. Box 1178
Billings, MT 59101

In re: Proposed NDO

Dear Mayor, City Council, City Administrator and City Attorney:

I understand that the City is considering adopting a Nondiscrimination Ordinance patterned after those adopted by Missoula, Helena and Butte. As I will explain below it is my opinion that all of the foregoing Cities [self-government cities] have acted in a manner that exceeds their legal authority.

Since most of you do not know me, I need to tell you that I was the first City attorney for the City of Billings when it commenced as a self-government city under its charter. I served for about 7 years as the City attorney and I continued to represent the City in litigation matters for about another 12 years. During that time I had extensive education on self government powers through study and litigation. I can tell you based on experience that the City has not fared well in the Courts when it has attempted to exceed those powers. In one case the City and the taxpayers paid about \$500,000.00 because it exceeded its authority. Not only did the Federal Court hold the City liable but it held each individual Council person liable. In another case where the City Council wanted to exceed its authority they were told by the then City attorney that the City would get sued and they would lose.

I have also served 4 terms as a Montana legislator and have served as vice chair and chair of the house judicial committee. I served as chair my last term. During that time these same issues came before my committee every term I was there. As

you probably know nothing is adopted by the legislature until it has extensive committee hearings in both the House and Senate, is lobbied extensively by all sides , debated on the floor of both houses, passed and signed by the Governor.

These issues came before the legislature every session I was there and came up again in 2013. What the advocates are trying to do is backdoor these issues to try to circumvent the legislative process. They have asked the legislature to change the law but the legislature has refused. They are putting the Cities in a position to be sued for exceeding their authority and the Cities are unwittingly going along.

The Montana Constitution is the basic law that governs all laws , persons and entities in the State of Montana. Adopting a NDO will cause and allow some of the rights granted to everyone to be infringed. See Article I Sections 3, 4, 5 and 10.

No City in the State of Montana self governing or not has any authority, nor can any authority be found to allow it to infringe on the rights guaranteed in the Constitution. That basic law is supreme in the State of Montana.

The Constitution of the State of Montana Article XI section 6 describes the extent of the self government powers as follows:

Self-government powers. a local government unit adopting a self-government charter may exercise any power **not prohibited** by this constitution, law or charter. . . . (emphasis provide by writer)

The legislature has passed laws that prohibit self-governments from exercising powers:

MCA § 7-1-111(1) any power that applies to or affects any private or civil relationship

MCA § 7-1-113 (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) * * *. (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.

The whole area of illegal discrimination has been affirmatively subjected by law to state regulation and control **MCA title 49 part 2**. The Montana Human Rights Commission is directed by the State legislature to establish administrative and procedural rules in implement the act, **MCA § 49-2-204**. Therefore a self-government city is prohibited from passing any ordinance dealing with discrimination.

In further support of the position stated above I attach for your further reading a letter memorandum prepared by Michael J San Souci, that I find very well analyzed and well reasoned and with which I totally agree.

Although I recognize that this is a lot of reading I urge you to take the time because of the importance of the issue to also read the cases that have been compiled by the Alliance Defending Freedom to see that those cases clearly violate many of the rights of citizens of Montana as guaranteed by our Constitution. I attach a copy of that also.

I am not hired by anyone and am just sharing my knowledge and understanding to help put this issue in proper perspective and to shed light and sunshine on the issues.

Thank you for the opportunity to address these issues.

Very truly yours,

KENNETH D. PETERSON

Attorney at law

Kenneth D. Peterson

KDP/nc