

Attorney General's Office: *AG Opinions*



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Attorney General Opinions

Montana Code Annotated
§ 2-15-501(7)



Attorney General Opinions

What is an Attorney General Opinion?

- An interpretation of state statute that carries the weight of law unless overturned by a state court.
- If an opinion issued by the Attorney General conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the Attorney General's opinion is controlling unless overruled by a state district court or the supreme court. § 2-15-501 (7)



Attorney General Opinions

Who can request an Attorney General Opinion?

The following officials have legal standing to request an opinion:

- An elected state official (Governor, SOS, Auditor, OPI)
- Leader of the MT House or MT Senate (Speaker and President)
- A state government department head
- Chair of or chief counsel for a state office, board, or commission
- City or town attorney
- County attorney
- Chair of or attorney for a board of county commissioners



Attorney General Opinions

In addition to Montana Code Annotated § 2-15-501 (7), there are longstanding *guidelines* that also must be considered before we act on a request.

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Guidelines: What types of requests may not be appropriate for an Attorney General Opinion?

- Questions involving factual disputes (e.g., credibility or liability questions)
- Questions concerning wholly abstract or hypothetical factual situations
- Questions which involve the constitutionality of a statute
- Questions which exclusively involve interpretation of a federal law or local ordinance



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Guidelines: What types of requests may not be appropriate for an Attorney General Opinion?

- Matters which are directly at issue in pending litigation or which are more appropriately determined adversarially, including matters which will likely result in litigation irrespective of the outcome of a written opinion from the Attorney General
- Interpretations of bills subject to future or ongoing legislative consideration or enacted bills not yet signed by the governor



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Other important points:

- A request must involve a question of law relating to the requestor's office. § 2-15-501(7)
- The request must be accompanied by a memorandum of authority citing basic research and points of law bearing upon the request.
- The memorandum should include the requestor's own conclusion on the question presented.
- Statute requires the Attorney General to issue an opinion within three months, unless the office certifies in writing that more time is necessary. § 2-15-501(7)



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Attorney General's Options when Opinion Request Received:

- No Action – Deny the request because it does not meet requirements of statute or guidelines.
- Letter of Advice – These letters do not carry the force of law, but can often be quicker and more appropriate.
- Attorney General Opinion – Statutory three-month timeline that may be extended at the discretion of the Attorney General. Draft opinion crafted, sent to interested parties for review, then finalized and returned to requestor. Opinions since 1993 available on the Department of Justice website.

Attorney General Opinions

- Examples of Opinions:
- **2012:** The library board has sole discretion to determine how to use unspent funds in the library reserve.
- **2004:** The closing of a county-owned incinerator by the Park County Commission is an administrative act not subject to initiative and referendum.
- **1999:** Mont. Code Ann. § 7-4-2503(3)(d)(ii) (1999) authorizes county commissioners to grant full-time county attorneys longevity increases for their years served as deputy county attorneys.
- **1994:** A small, transit-type bus (which is smaller than a greyhound bus but larger than a nine-passenger van) is a “school bus” under Mont. Code Ann. §20-10-101(2) and may not be used to transport students to extracurricular activities unless it meets the 1990 National Standards for School Buses adopted by the Montana Board of Public Education.

Questions?