

Ordinance No 6

RESOLUTION NO. 706

WHEREAS section 45-8-201(5), MCA, passed by the Montana voters via initiative number 79 in 1978, allows local governments to adopt obscenity ordinances more restrictive than state law, and

WHEREAS numerous citizens in Ravalli County have either petitioned or requested by letter that the Board of County Commissioners pass more restrictive obscenity ordinances and the Board did not act, and

WHEREAS the BOARD OF COUNTY COMMISSIONERS have made it clear that enforcement costs or legal costs of more restrictive ordinances would be cost prohibitive to the existing budget, and

WHEREAS the United States Supreme Court decisions have primarily treated legal tests of obscenity ordinances under the rights guaranteed by the First Amendment, and

WHEREAS a proposed ordinance entitled "Distribution of Obscenity" has been presented to the Board of County Commissioners

BE IT THEREFORE RESOLVED, that the "Distribution of Obscenity" proposed ordinance as attached be sent to all registered voters and be placed on the general election ballot in November 1994 as follows:

Shall Ravalli County adopt Ordinance No. 6 - "Distribution of Obscenity" YES or NO

BE IT THEREFORE RESOLVED, that since State Law is clear in Section 45-8-201 (5), MCA, that cities or towns are legally vested with the authority to adopt their own more restrictive obscenity ordinances, then if the "Distribution of Obscenity" issue passes, its effect by law will be exclusive to Ravalli County and not the jurisdiction of cities and towns.

DISTRIBUTION OF OBSCENITY

WHEREAS, Sections 7-5-131 through 7-5-132, Montana Code Annotated, provide a method for proposing and adapting ordinances for Ravalli County, Montana; and

WHEREAS, the dissemination of obscene materials constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Ravalli County; and

WHEREAS, Section 45-8-201(5) Montana Code Annotated authorizes the adoption by said county of an ordinance more restrictive as to obscenity than the existing provisions of section 45-8-201 and 45-8-202, Montana Code Annotated.

Now, THEREFORE the following ordinance shall be in full force and effect in all of Ravalli County, Montana.

Section 1. Definitions. The following definitions apply in this ordinance:

- (a) "Disseminate" means to transfer, distribute, dispense, lend, show, display, exhibit, send, transport, sell, deliver, provide, or agree to sell, deliver or provide.
- (b) "Obscene". Any material or performance, whether through pictures, photographs, drawings, writings, cartoons, recordings, films, videotapes, or other such medium, is "obscene" if,
 - (1) the average person, applying contemporary community standards, would find that the material or performance, taken as a whole, appeals to the prurient interest; and
 - (2) the material or performance depicts or describes, in a patently offensive way, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals; and
 - (3) the material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- (c) "Material" means any book, magazine, newspaper, advertisement, pamphlet, poster, print, picture, figure, image, drawing, description, motion picture film, phonographic record or recording tape, video tape, or other tangible thing capable of producing or reproducing an image, picture, sound or sensation through sight, sound, or touch.
- (d) "Performance" means any motion picture, film, video tape, played record, phonograph, or tape, broadcast, preview, trailer, play, show, skit, dance, or any other exhibition performed or presented to or before an audience of one or more, transmitted by means of electrical, radio, television, telephonic, or other communicative device or facility to a known closed or open circuit audience of one or more persons or to the general public.

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DISTRIBUTION OF OBSCENITY, (CONT'D)

- (e) "Person" means any individual, corporation, company, partnership, firm, association, business, establishment, organization, or other legal entity of any kind.
- (f) "Prurient" means a lustful lascivious, erotic, shameful, or morbid interest in sexual conduct, sexually explicit nudity, sadomasochistic sexual abuse, or lewd exhibition of the genitals. Materials or performances may be deemed to appeal to the prurient interest when they have a tendency to excite lustful thoughts or lascivious desires, or when they are designed, marketed, promoted, or disseminated to cater or appeal to such an interest. Where the material or performance is designed for or primarily disseminated or promoted to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance, taken as a whole, appeal to the prurient interest in sex of the members of the intended and probable recipient group.
- (g) "Sexual Conduct" means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, anilingus, or physical contact with a person's nude or partially denuded genitals, public area, perineum, anal region, or, if such person be female, a breast.
- (h) "Sadomasochistic sexual abuse" means actual or simulated flagellation, rape, torture, or other physical or sexual abuse, by or upon a person who is nude or partially denuded or in a condition of being fettered, bound, or otherwise physically restrained for the actual or simulated purpose of sexual gratification of abuse or represented in the context of a sexual relationship.

Section 2. Affirmative defense. It is an affirmative defense to a charge under this ordinance that the material or performance involved was disseminated or promoted for a bona fide medical, psychological, legislative, judicial, or law enforcement related purpose, by or to a physician, psychologist, legislator, judge, prosecutor, law enforcement officer, or other person having such bona fide interest in such material or performance.

Section 3. Disseminating obscene material. A person commits the offense of disseminating obscene material when, with the knowledge of the general nature and character of the content of the material involved irrespective of the absence or presence of an evil motive, bad purpose or intent to violate or disregard the law, he:

- (a) willfully disseminates obscene material; or,
- (b) knowing or having reason to know that it will be disseminated, willfully finances the manufacture or production, produces, manufactures, directs, photographs, poses, acts, or in any way assists in the production, copying or production of visually represented obscene material.

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Section 4. Penalty. A person convicted of the offense of disseminating obscene material shall be guilty of a misdemeanor.

Section 5. Severability clause. If any provision of this ordinance is held to be invalid, such invalidity shall not effect other provisions which can be given effect without the invalid provision. To this end provisions of this ordinance are to be severable.

Passed this 4th day of August, 1994
BOARD OF COUNTY COMMISSIONERS

Steven D. Powell, Chairman

Allen C. Horsfall, Jr., Member

Jerry L. Allen, Member

Attest: Beth T. Sunk
Clerk & Recorder

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