

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2016-018

TO: Mayor John Engen; Dale Bickell; Steve Johnson; Leigh Griffing; John Wilson; Mike Haynes; Kevin Slovarp; Doug Harby; Don Verrue; Denise Alexander; Donna Gaukler; Kathy Mehring; Brian Hensel; Jessica Miller; Jason Diehl; Jeff Brandt; Chad Nicholson; Laurie Pfau; Mike Brady; Chris Odlin; Mike Colyer; Scott Hoffman; Carl Horton; Marty Rehbein; Wayne Gravatt; Scott Paasch; Starr Sullivan; Pat Brook; Richard Stepper; Laurie Clark; Kirsten Hands; Heidi Bakula; Matthew Lawson; Ron Regan and Eran Pehan

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE August 9, 2016

RE: Reminder Mayor as Chief Executive executes all documents on behalf of the City of Missoula.

FACTS:

Several times a year our office receives an inquiry as to who should sign city documents on behalf of the City of Missoula, Pursuant to Montana State law, an incorporated city is a municipal corporation with the power to sue and be sued as well as to tax. City departments or divisions do not have the power to tax. If a plaintiff in a civil tort lawsuit attempts to sue a city department or division, such as city police, the city in part defends the city department or division by arguing that the city department is part of the city and is not a separate independent legal entity as well as that city department/divisions do not have the power to sue or be sued.

ISSUE:

Pursuant to the City of Missoula Self-government Charter and Montana municipal government law, who is to sign or execute documents on behalf of the City of Missoula?

CONCLUSION:

Pursuant to city charter as well as Montana state law, the Mayor as City of Missoula Chief Executive Officer is the individual who legally is to sign or execute all documents on behalf of the City of Missoula.

LEGAL DISCUSSION:

Section 7-1-4101 MCA provides that a city is a municipal corporation. A municipality has the power to tax as well as the power to sue or be sued. See sections 7-1-4123 and 7-1-4124 MCA. A city department or division does not possess these same powers. The Mayor as the City's Chief Executive Officer is to sign or execute all City documents. Contracts or agreements entered into on the City's behalf must be approved by the mayor. The City of Missoula self-government charter adopted June 4, 1996 and effective January 1, 1997 sets forth ARTICLE III entitled "THE MAYOR", which provides pursuant to ARTICLE III, section 4 as follows:

"4. DUTIES OF THE MAYOR. The Mayor shall execute all ordinances and resolutions passed by the City Council. The Mayor shall also execute all documents on behalf of the City following approval by the City Council.
(emphasis added)

This Mayoral duty set forth in the City of Missoula city charter is consistent with applicable provisions of Montana state law pertaining to the applicable mayor city council form of government.

Section 7-3-113 MCA generally identifies the provisions of title 7, chapter 3, part 2 MCA that pertain to a Montana municipal government self-government form of government that utilizes a mayor/chief executive officer and a city council/city commission, unless the city elector adopted city charter has a provision that is different. Subsection 7-3-113(1)(c) MCA indicates that section 7-3-203 MCA is applicable to the City of Missoula's form of self-government local government. Subsection 7-3-203(7) MCA provides:

"7-3-203. DUTIES OF EXECUTIVE. The executive shall:

.....
(7) execute bonds, notes, contracts, and written obligations of the commission (council)subject to the approval of the commission (council)" (emphasis added)

Subsection 7-1-4114(2) MCA pertaining to municipal executive officers states:

"7-1-4114. MUNICIPAL EXECUTIVE OFFICERS.

.....
(2) The mayor is the chief executive officer of the city or town".

Section 7-4-4303 MCA is entitled "POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, CITIZENS". Subsection 7-4-4303(3) MCA provides:

"7-4-4303. POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, AND CITIZENS. The mayor has the power to:

.....
(3) supervise the discharge of official duty by all subordinate officers;"

Subsection 2.02.010 (C) Missoula Municipal Code (MMC) states basically the same law as subsection 7-4-4303(3) MCA set forth above.

Pursuant to Montana state law, only the mayor is empowered to exercise municipal corporate voting rights on behalf of the municipal city government to petition, protest or vote on behalf of the municipal city government with respect to property owned by the municipal government. See section 7-1-4134 MCA entitled "RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION". Section 7-1-4134 MCA provides as follows:

"7-1-4134. RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

CONCLUSION:

Pursuant to city charter as well as Montana state law, the Mayor as City of Missoula Chief Executive Officer is the individual who legally is to sign or execute all documents on behalf of the City of Missoula.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:ajg