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Legal Opinion 2016-023

TO: John Engen, Dale Bickell, Ellen Buchanan, Chris Behan, Alan Hulse, Ann Komac, Mark Gauthier, Leigh Griffing, Steve Johnson

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE November 4, 2016

RE: Montana Municipal Government law does not empower a municipal urban renewal agency or department with the power to sue to be sued

FACTS:

Current civil litigation filed in the Fourth Judicial District, Missoula County, State of Montana, Cause NO. DV-12-636, MIDNITE DEVELOPMENT, LLC v. WGM GROUP, INC., MYTTY EXCAVATING, INC. d/b/a WESTERN EXCAVATING; CITY OF MISSOULA; MISSOULA REDEVELOPMENT AGENCY; DOWNTOWN BUSINESS IMPROVEMENT DISTRICT OF MISSOULA; JOHN DOES 1-5; AND CORPORATE, LIMITED LIABILITY PARTNERSHIP, OR BUSINESS ENTITY DOES 1-5 involves a Plaintiff who is attempting to sue both the City of Missoula as well as Missoula Redevelopment Agency separately, even though the construction project did not involve the Missoula Redevelopment Agency in any manner with respect to Missoula Redevelopment agency management, administration, approval or funding of the project. The Missoula Redevelopment Agency is an integral part of the City of Missoula local government operations. Missoula Redevelopment Agency's budget is reviewed and approved by the Mayor and Missoula City Council. Many Missoula Redevelopment actions must be approved by the Missoula City Council. Examples include; but are not limited to, the creation of urban renewal districts, approval of urban renewal plans, approval of some projects, etc.. Missoula Redevelopment Agency employees are City of Missoula employees. City of Missoula local government services are provided to Missoula Redevelopment Agency, whether it be finance or human resources, etc.

ISSUE(S):

Did the Montana State Legislature provide a municipal urban renewal agency or department with the power "to sue or be sued"?

CONCLUSION(S):

The power “to sue or be sued” is not a statutory power identified by the Montana State Legislature in section 7-15-4233 MCA entitled “POWERS WHICH MAY BE EXERCISED BY URBAN RENEWAL AGENCY OR AUTHORIZED DEPARTMENT”.

LEGAL DISCUSSION:

Pursuant to Montana municipal government state laws, there are several examples of laws where the Montana State Legislature explicitly statutorily provides the power “to sue or be sued”. For example the power “to sue or be sued” is expressly provided by state law in:

- (1) Municipal local government powers, subsection 7-1-4124(2) MCA a municipality has the power to “sue or be sued”;
- (2) Business Improvement District Act, subsection 7-12-1131 (1) MCA powers include the power to “sue or be sued”. It should also be noted that, pursuant to section 7-12-1143 MCA, a business improvement district must obtain its own liability insurance.
- (3) Municipal Housing Authorities general statutory powers pursuant to subsection 7-15-4451(2)(a) MCA include the power to “sue and be sued”.

The statutory powers established for Montana urban renewal agencies or departments do not include the power “to sue or be sued” in subsection 7-15-4233(1) MCA. Further, subsection 7-15-4233(2) MCA expressly provides that any powers not granted in subsection 7-15-4233(1) MCA “MAY ONLY BE EXERCISED BY THE LOCAL GOVERNING BODY”. (emphasis added)

Section 7-15-4233 MCA entitled “POWERS WHICH MAY BE EXERCISED BY URBAN RENEWAL AGENCY OR AUTHORIZED DEPARTMENT” provides as follows:

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

- (a) to formulate and coordinate a workable program as specified in 7-15-4209;
- (b) to prepare urban renewal plans;
- (c) to prepare recommended modifications to an urban renewal project plan;
- (d) to undertake and carry out urban renewal projects as required by the local governing body;
- (e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;
- (f) to disseminate blight clearance and urban renewal information;
- (g) to exercise the powers prescribed by 7-15-4255, except the power

to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law. (emphasis added)

The Montana state legislature did not empower a municipal urban renewal agency or department with the power “to sue or be sued”. Further, pursuant to the rules of statutory construction (interpretation) words that are omitted from a law by the legislative body may not be inserted through interpretation. See section 1-2-101 MCA. Pursuant to Montana state law, a Montana municipal urban renewal agency or department was not empowered “to sue or be sued” and therefore may not legally be sued, separate and independent from the municipality.

CONCLUSION(S):

The power "to sue or be sued" is not a statutory power identified by the Montana State Legislature in section 7-15-4233 MCA entitled "POWERS WHICH MAY BE EXERCISED BY URBAN RENEWAL AGENCY OR AUTHORIZED DEPARTMENT".

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