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Legal Opinion 2017-017

TO: Mayor Engen; City Council; Dale Bickell; Marty Rehbein; Kirsten Hands; Leigh Griffing; Steve Johnson; Scott Paasch

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE June 21, 2017

RE: City council option of scheduling municipal election by passing a resolution not more than 10 days after the close of filing when number of candidates for municipal election do not meet certain statutory thresholds for requiring a municipal primary election.

FACTS:

Pursuant to a June 20, 2017, letter from Missoula County Election Administrator Rebecca Connors to Mayor John Engen, city officials were informed that in 2017 a Municipal primary election was not required to be held pursuant to Montana election law. Pursuant to Montana nonpartisan election law, if the number of candidates for office does not meet certain statutory thresholds, the election administrator may determine that a primary election need not be held. If the election administrator makes a statutory determination that a primary election need not be held, it then becomes the governing body's (city council) decision as to whether to require a primary election.

ISSUE(S):

1. At the close of filing to file for elective municipal office in nonpartisan municipal elections, if the election administrator indicates that statutorily a primary election, for a municipal election need not be held, may the city council require a primary election?
2. How soon must the city council act after the deadline for filing for elective office?

CONCLUSION(S):

1. If the election administrator indicates that, statutorily, a primary election for a municipal election need not be held, the governing body (city council) has the option to require that a primary election be held.

2. The city council must act within ten (10) days after the closing of filing for elective office. If the city council desires a municipal primary election be held, they must pass a resolution providing for a municipal primary election.

LEGAL DISCUSSION:

Title 13, MCA, is entitled “ELECTIONS”. Title 13, Chapter 14, MCA, is entitled “NONPARTISAN ELECTIONS”. Pursuant to the City of Missoula elector adopted City Charter, City municipal elections are nonpartisan elections. Title 13, Chapter 14, part 115, MCA, pertains to the preparation and distribution of nonpartisan primary ballots as well as the statutory threshold of candidates determination as to whether a primary election is automatically statutorily required for a nonpartisan primary election.

Subsection 13-14-115 provides:

- 13-14-115. Preparation and distribution of nonpartisan primary ballots -- determination on conducting primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in **13-10-209** and be without political designation.
- (2) (a) The election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:
- (i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and
 - (ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.
- (b) If the election administrator determines that a municipal primary election must be held pursuant to subsection (2)(a) of this section for a local nonpartisan office, the election administrator shall conduct the election only for the local nonpartisan offices that have candidates filed in excess of two times the number to be elected to that office.
- (c) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a) or (2)(b) for a local nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office.
- (3) The governing body may require that a primary election be held for a local nonpartisan office if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office.

Pursuant to §13-14-115(2), MCA, it appears that if there are more than three candidates for office in no more than one-half of the offices on the ballot and the number of candidates is

not five or more for any single office on the ballot, the election administrator is required to determine that no primary election is statutorily necessary. The election administrator determines whether a primary election needs to be held pursuant to the statutes. If the election administrator determines that a primary election need not be held, the city council then has discretion to make a decision whether the city council desires to have a primary municipal election in that election year.

Title 1, chapter 1, part 3, MCA, is entitled “RULES CONCERNING TIME”. §1-1-306, entitled “COMPUTATION OF TIME – WHICH DAYS COUNTED” provides:

1-1-306. Computation of time -- which days counted. The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

Pursuant to § 1-1-216(1)(a), MCA, Sunday is identified as a holiday. Thus, pursuant to §§ 13-14-115, 1-1-306 and 1-1-216, MCA, if Monday, June 19, 2017, is the closing deadline for nonpartisan candidates for city office to file for nonpartisan election, when calculating the 10 calendar days, June 19 is not counted. The 10th calendar day would be Thursday, June 29, 2017.

Pursuant to Montana law, when calculating a statutory time period, commence counting the day after the day that triggers the counting. If the final day of the statutory time period calculation ends on a Sunday, statutorily the next regular business day is calculated as the conclusion of the statutory time period.

CONCLUSION(S):

1. If the election administrator indicates that, statutorily, a primary election for a municipal election need not be held, the governing body (city council) has the option to require that a primary election be held.
2. The city council must act within ten (10) days after the closing of filing for elective office. If the city council desires a municipal primary election be held, they must pass a resolution providing for a municipal primary election.

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/s/

Jim Nugent, City Attorney

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