

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2019-023

TO: Mayor John Engen; Dale Bickell; Steve Johnson; Leigh Griffing; Jeremy Keene; Dennis Bowman; Katie Emery; Kevin Slovarp; Aaron Bowman; Denise Alexander; Donna Gaukler; Brian Hensel; Jessica Miller; Jeff Brandt; Gordy Hughes; Brad Davis; Mike Brady; Chris Odlin; Mike Colyer; Scott Hoffman; Carl Horton; Marty Rehbein; Scott Paasch; Pat Brook; Richard Stepper; Laurie Clark; Kirsten Hands; Heidi Bakula; Matthew Lawson; Ron Regan; Eran Pehan; Tiffany Brander; Kathy Crego; Michele Harley; Betsy Willett; Shirley Kinsey; Troy Monroe; Morgan Valiant; Monte Sipe; David Selvage

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE August 23, 2019

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

FACTS:

Recently there have been numerous inquiries as to who should sign a contract or legal document binding on the City of Missoula.

ISSUE:

Pursuant to law, who is to sign or execute documents and contracts on behalf of the City of Missoula?

CONCLUSION:

Legally the Mayor as City of Missoula Chief Executive Officer is the individual who is to sign or execute all legal documents and contracts on behalf of the City of Missoula.

LEGAL DISCUSSION:

Title 7, Chapter 1, part 41 MCA is entitled "MUNICIPALITIES". Pursuant to section 7-1-4101 MCA 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 is not

a legal entity and does not possess these same powers. The Mayor as the City's Chief Executive Officer is to sign or execute all City legal 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". Pursuant to ARTICLE III, section 4 the city self-government charter states:

"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 provision of City of Missoula city charter is consistent with applicable provisions of Montana state law pertaining to the applicable city voter adopted mayor city council form of municipal 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 form of government, 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) and (P) Missoula Municipal Code (MMC) similarly recognizes mayoral power as subsection 7-4-4303(3) MCA set forth above.

Also, worthy of note is that pursuant to Montana state law, only the mayor as chief executive 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:

Legally the Mayor as City of Missoula Chief Executive Officer is the individual who is to sign or execute all legal documents and contracts on behalf of the City of Missoula.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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