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Legal Opinion 2020-009

TO: Mayor, City Council, Municipal Court Judge Kathleen Jenks, Tina Reinicke, Ellen Leahy, Mike Colyer, Scott Hoffman, Richard Stepper, Laurie Clark, Marty Rehbein, Kirsten Hands, Kelly Elam, Jeff Brandt, Gordy Hughes, Brad Davis, Charmell Owens

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 7, 2020

RE: Pursuant to section 41-5-203 MCA, City of Missoula Municipal Court has jurisdiction of youth under the age of 18 years who commit tobacco products offenses as well as other offenses such as traffic, fish and game, alcoholic beverage and gambling violations.

FACTS:

During recent discussions pertaining to potential city council regulation of vaping and tobacco products, there has been some inquiry pertaining to the city municipal court's jurisdiction with respect to youth tobacco product offenders.

ISSUE(S):

Would the city municipal court have jurisdiction of youth under age 18 committing city ordinance tobacco products offenses?

CONCLUSION(S):

Yes the city municipal court would have jurisdiction of youth under age 18 who violate a city tobacco products ordinance as well as Montana state law. Also, with respect to other offenses committed by youth under 18 years of age, the city municipal court has jurisdiction of traffic, fish and game law, alcohol beverage and gambling offense violations.

LEGAL DISCUSSION:

The municipal court is commonly identified as having jurisdiction of youth under the age of 18 years of age who commit offenses pertaining to (1) traffic, (2) fish and game law, (3) alcoholic beverage, (4) tobacco products and (5) gambling laws. Montana State Youth Court Act law

specifies that the city municipal court has concurrent jurisdiction with the youth court of the district court of (1) alcoholic beverages, (2) tobacco products, and (3) gambling violations alleged to have been committed by youth.

Montana's Youth Court Act is set forth in title 41, chapter 5, MCA. Section 41-5-203 MCA of the Youth Court Act is entitled "JURISDICTION OF COURT". Subsections 41-5-203 (1) and (2) MCA are the provisions pertinent to city municipal court jurisdiction.

Subsections 41-5-203 MCA state:

- 41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the district court under **41-5-206**, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth or a youth in need of intervention or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.
- (2) Justices', municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.
- (3) The court has jurisdiction to:
- (a) transfer a youth court case to the district court after notice and hearing;
 - (b) with respect to extended jurisdiction juvenile cases:
 - (i) designate a proceeding as an extended jurisdiction juvenile prosecution;
 - (ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;
 - (iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;
 - (iv) continue, modify, or revoke the stay after notice and hearing;
 - (v) after revocation, transfer execution of the stayed sentence to the department;
 - (vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and
 - (vii) transfer a juvenile case to district court after notice and hearing; and
 - (c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16.

CONCLUSION(S):

Yes the city municipal court would have jurisdiction of youth under age 18 who violate a city tobacco products ordinance as well as Montana state law. Also, with respect to other offenses committed by youth under 18 years of age, the city municipal court has jurisdiction of traffic, fish and game law, alcohol beverage and gambling offense violations.

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/s/

Jim Nugent, City Attorney

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