

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2020-010

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Jessie Hogg, Robert Brovold, Marty Rehbein, Kirsten Hands, Kelly Elam, Jeremy Keene, Mary McCrea, Eric Anderson, Andrew Boughan, Brian Hensel, Kevin Slovarp, Tory Monroe, Donna Gaukler, Grant Carlton, Neil Minor, Betsy Willet, Tom Zavitz, Jen Gress, Laval Means, Mike Colyer, Scott Hoffman, Jeff Brandt, Gordy Hughes, Brad Davis, Rick Larson, Chad Pancake, Ellen Buchanan, Chris Behan

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 25, 2020

RE: City Municipal Annexations are required by Montana law to include within the city annexation the full width of any public streets, roads or rights-of-way that are adjacent to the property being annexed.

FACTS:

In recent months there have been multiple city employees who did not understand that city annexations are required by law to include in the city annexation the full width of any public streets, roads or rights of way that are adjacent to the property being annexed.

ISSUE(S):

What does municipal state law require with respect to the scope of a city annexation that is adjacent to a public street, road, or right-of-way.

CONCLUSION(S):

Montana municipal state law requires that any city annexation of property include the full width of any adjacent public street, roadway, or public right of way as part of the land area being annexed.

LEGAL DISCUSSION:

Title 7, Chapter 2, Part 42 MCA is entitled "ADDITION TO MUNICIPALITIES. The 2003 Montana State Legislature pursuant to SB-168(2003) enacted a Montana municipal law requirement entitled "AN ACT REQUIRING THAT MUNICIPALITIES ANNEX ROADS AND

STREETS THAT ARE ADJACENT TO PROPERTY THAT IS BEING ANNEXED. See LAWS OF MONTANA, Volume II, FIFTY-EIGHTH LEGISLATURE 2003, CHAPTER NO. 334, (SB-168(2003) pages 1131-1132. This new 2003 Montana municipal law was codified in section 7-2-4211 MCA.

Later in 2015 the Montana State Legislature pursuant to HB-158(2015) enacted an additional Montana municipal law entitled “AN ACT REQUIRING THAT CERTAIN PARKS THAT ARE WHOLLY SURROUNDED BY PROPERTY BEING OR ALREADY ANNEXED BY A MUNICIPALITY BE INCLUDED IN THE ANNEXATION AND AMENDING SECTION 7-2-4211 MCA.”. See LAWS OF MONTANA, volume 1 SIXTY-FOURTH LEGISLATURE 2015, CHAPTER NO. 158 (HB-183)(2015), Page 632. As noted in the legislative bill’s title, this new Montana municipal law was amended into Section 7-2-4211 MCA.

Section 7-2-4211 MCA states:

“7-2-4211. INCLUSION OF ROADS, RIGHTS OF WAY, AND PARKS IN ANNEXATIONS. IN ALL INSTANCES OF ANNEXATION allowed under parts 42 through 47 of this Chapter, THE MUNICIPALITY SHALL INCLUDE:

- (1) Parks created pursuant to Title 76, chapter 3,, except for county owned parks that are wholly surrounded by other property being or already annexed; and
- (2) THE FULL WIDTH OF ANY PUBLIC STREETS OR ROADS, INCLUDING THE RIGHTS-OF-WAY THAT ARE ADJACENT TO THE PROPERTY BEING ANNEXED.” (emphasis added)

CONCLUSION(S):

Montana municipal state law requires that any city annexation of property include the full width of any adjacent public street, roadway, or public right-of-way as part of the land being annexed.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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