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Legal Opinion 2020-011

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Jessie Hogg, Robert Brovold, Marty Rehbein, Kirsten Hands, Kelly Elam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 27, 2020

RE: All accounts and demands (bills and claims) against a city must be submitted to the city council and if found correct, must be allowed and an order must be made that the demand be paid.

FACTS:

During the city council administration and finance committee Wednesday February 26, 2020 there was some inquiry and discussion pertaining to claims against the city being submitted to the city council.

ISSUE(S):

Pursuant to Montana municipal state law, what is the city council's role with respect to city payment of accounts and demands (bills and claims)?

CONCLUSION(S):

Pursuant to sections 7-6-4301 and 7-6-4302 MCA, all accounts and demands (bills and claims) must be presented to the city council after review by the city finance director. If the accounts and demands against the city are found to be correct, they must be allowed and an order must be made that the demand against the municipality must be paid.

LEGAL DISCUSSION:

Title 7, Montana Code Annotated (MCA) is entitled "LOCAL GOVERNMENT". Chapter 6 of title 7 MCA is entitled "FINANCIAL, ADMINISTRATION AND TAXATION". Part 43 of title 7, chapter 6 MCA is entitled "CLAIMS AGAINST MUNICIPALITY". Two important sections of title 7, chapter 6, part 43 MCA are section 7-6-4301 MCA entitled "PRESENTATION OF CLAIMS AGAINST MUNICIPALITY" and section 7-6-4302 MCA entitled "PAYMENT OF CLAIMS BY WARRANT OR CHECK".

Pursuant to section 7-6-4301 MCA entitled “PRESENTATION OF CLAIMS AGAINST MUNICIPALITY” all accounts and demands against the municipality must be forwarded to the city council after review by the finance director, and the city council is identified several times in this law. Since the City of Missoula is the second largest municipal corporation in the State of Montana with a population over 70,000 it has many municipal departments/divisions in order to effectively and efficiently provide municipal government services.

Therefore practically, in order to be manageable for both the city council and finance director, not every item of information about each claim is attached by the finance director to each claim that is submitted to the city council. This is also a function of the software that is used. The city does not have the technological capability to produce reports with a great amount of detail. Scanning invoices to be viewed electronically would be exceedingly onerous and likely require at minimum one more full time employe in the finance department. In addition, practically the City of Missoula finance director must have several administrative support staff to assist with review of all the accounts and demands (bills and claims) that the second largest municipal corporation in the State of Montana incurs.

Section 7-6-4301 MCA states:

“PRESENTATION OF CLAIMS AGAINST MUNICIPALITY. (1) All accounts and demands against a city or town must be presented to the council in an itemized format. These claims must be presented with all necessary and proper vouchers within 1 year from the date the claims accrued. An action may not be maintained against the city or town for or on account of any demand or claim against the city or town until the demand or claim has first been presented to the council.

(2) Payment of claims against a city or town may be authorized by the council when:

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that the payee has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost for each item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) A claim or demand not presented within the time provided in subsection

(1) is forever barred, and the council has no authority to allow any account or demand not presented as provided in this section.” (emphasis added)

Pursuant to section 7-6-4302 MCA entitled “PAYMENT OF CLAIMS BY WARRANT OR CHECK”, all accounts and demands if found to be correct must be allowed by the city council and an order of the the city council must be made and the demand be paid.

Section 7-6-4302 MCA states:

“7-6-4302. PAYMENT OF CLAIMS BY WARRANT OR CHECK. All accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The demand must be paid in accordance with one of the following options:

- (1) The mayor may draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk shall pay the warrant out of the proper fund.
- (2) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the check.” (emphasis added)

Pursuant to section 7-4-4106 MCA a city council may consolidate municipal offices. Many years ago, the Missoula City Council consolidated the City of Missoula offices of finance director and city treasurer into the office of finance director. Further, pursuant to the statutory provisions applicable to the form of Missoula city government adopted by the City of Missoula, electors/voters pursuant to subsection 7-3-217(2) MCA a financial officer (director) may be appointed by the executive/mayor with the consent of the city council. Consolidation of the above-mentioned municipal officers allows for ensuring that a finance director with financial qualifications and expertise may be employed as finance director while also providing financial expertise for the statutory city treasurer roles as well.

CONCLUSION(S):

Pursuant to sections 7-6-4301 and 7-6-4302 MCA, all accounts and demands (bills and claims) must be presented to the city council after review by the city finance director. If the accounts and demands against the city are found to be correct, they must be allowed and an order must be made that the demand against the municipality must be paid.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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