

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2021-006

**TO:** Mayor John Engen, City Council, Municipal Court Judge Kathleen Jenks, Tina Reinicke, Dale Bickell, Jessica Miller, Marty Rehbein, Leigh Griffing, Angela Simonson, Ginny Merriam, Kirsten Hands, Jaeson White, Scott Hoffman, Laurie Clark

**CC:** Department Attorney

**FROM:** City Attorney, Jim Nugent

**DATE:** April 13, 2021

**RE:** MUNICIPAL COURT ELECTED JUDGES

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### FACTS:

Senate Bill-127(2021) revises laws on election of municipal court judges, eliminating the ability of a municipal court judge to appoint a part time assistant judge, thereby practically requiring multiple elected municipal court judges in the City of Missoula. In anticipation of the necessity for the City of Missoula having multiple municipal court judges, the purpose of this legal opinion is to assist City of Missoula elected officials to be informed as to provisions of Montana state law pertaining to elected municipal court judges.

### ISSUE(S):

What are important provisions of Montana state law that City of Missoula elected officials should be aware of with respect to elected municipal court judges?

### CONCLUSION(S):

Sections 3-6-201 MCA pertaining to number of municipal court judges, their election, term of office, duties of chief judge as well as 3-6-202 MCA pertaining to qualifications of municipal court judges are potentially the most important Montana state laws for City of Missoula elected officials to be aware of with respect to city municipal court judges.

## **LEGAL DISCUSSION:**

Initially as general background information it is important to note that pursuant to Montana state law pertaining to self-government power local governments, pursuant to section 7-1-114 MCA entitled MANDATORY PROVISIONS; pursuant to subsection 7-1-114(1)(d) MCA it is mandatory that a local government with self-government powers is subject to “all laws regulating the election of local officials”.

Pursuant to subsection 13-1-104 MCA entitled TIME FOR HOLDING GENERAL ELECTIONS; in every odd numbered year an election of officers for municipalities required by law must be held on the first Tuesday after the first Monday in November. See subsections 13-1-104(1) & (3) MCA. Section 13-1-107 MCA is entitled “TIMES FOR HOLDING PRIMARY ELECTIONS-COST OF MUNICIPAL ELECTION. Subsection 13-1-107(2) MCA states: “(2) On the Tuesday following the second Monday in September preceding a general election held in an odd-numbered year a primary election, if required, must be held throughout the state”.

In summary format, several key provisions of Montana municipal judges’ laws include the following provisions:

- (1) The governing body by ordinance determines the number of judges required to operate the municipal court, 3-6-201(1) MCA;
- (2) A municipal court judge “must be elected at the general election, as provided in 13-1-104(3)” MCA. 3-6-201(2) MCA.
- (3) The municipal court judge shall hold office for a term of 4 years and until a successor is elected and qualified. 3-6-201(2) MCA.
- (4) If there is more than one municipal court judge, the municipal court judges shall adopt a procedure by which they either select a chief judge at the beginning of each calendar year; or select a chief municipal court 3-6-201(4) MCA judge for a specific period of time. If the municipal court judges cannot agree as to who the chief judge should be, the municipal court judge with the most seniority shall serve as the chief judge. 3-6-201(4) MCA.
- (5) The chief municipal court judge shall provide for the efficient management of the municipal court in cooperation with other municipal court judges. 3-6-201(5) MCA.
- (6) A municipal court judge must have the same qualifications as a district court judge, as set forth in Article VII, section 9 of the Montana Constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 3 years prior to the date of appointment or election. . 3-6-202(1) MCA.

- (7) Pursuant to Article VII, section 9 of the Montana Constitution, key Montana Constitutional qualifications for judge are that the person is a citizen of the United States who has resided in Montana two years immediately before taking office. Qualifications and methods of selection of judges shall be provided by Montana state law. No judge shall practice law or engage in any other employment during their term of office.
- (8) A municipal court judge shall reside for at least one year in the county in which the court is located for at least one year preceding election. Subsections 3-6-202(2) & 3-10-204(2) MCA.
- (9) The Montana Commission on courts of limited jurisdiction upon finding compliance with the above identified qualifications set forth in subsections 3-6-202(1) & (2) MCA as well as provided a certificate that the person possesses and files with the county clerk and recorder “a certificate of completion of a course of education and training prescribed by the “Montana Commission on courts of limited jurisdiction. 3-6-202(3) and 3-1-1502 MCA.
- (10) A municipal court judge “shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court.” and file an affidavit of compliance with the continuing judicial education requirements

**CONCLUSION(S):**

Sections 3-6-201 MCA pertaining to number of municipal court judges, their election, term of office, duties of chief judge as well as 3-6-202 MCA pertaining to qualifications of municipal court judges are potentially the most important Montana state laws for City of Missoula elected officials to be aware of with respect to city municipal court judges.

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/s/ Jim Nugent  
Jim Nugent, City Attorney

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