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Legal Opinion 2021-018

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Ellen Buchanan, Marty Rehbein

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE: September 22, 2021

RE: Oath of office for city elected officials is to support, protect, and defend the constitution of the United States and the constitution of the state of Montana

FACTS:

During the city council administration and finance committee Wednesday September 22, 2021, there was comment by a city council member in part stating that his oath of office included supporting state laws, apparently as he interpreted those state laws.

ISSUE(S):

Does the oath of office for city local government elected officials include any reference to state laws?

CONCLUSION(S):

The Constitutional and statutory oath of office that city local government elected officials take is to support, protect and defend both the United States and state of Montana Constitutions.

LEGAL DISCUSSION:

Montana oath of office law requires local city elected officials to take an oath of office supporting both the United States and state of Montana Constitutions. There is no reference to supporting state law in the oath of office required by Montana law.

Article III, section 3 of Montana's Constitution is entitled OATH OF OFFICE and sets forth the oath of office that government officials are required to take. Article III, section 3 states:

Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I DO SOLEMNLY

SWEAR (OR AFFIRM) THAT I WILL SUPPORT, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTION OF THE STATE OF MONTANA, AND THAT I WILL DISCHARGE THE DUTIES OF MY OFFICE WITH FIDELITY (SO HELP ME GOD). No other oath, declaration, or test shall be required as qualification for any office or public trust.” (emphasis added)_

Montana municipal government law, section 7-1-4137 MCA entitled OATH OF OFFICE states:

7-1-4137. OATH OF OFFICE. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. Before the officer performs any official duties, the oath of office certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2) an appointed officer shall file the oath with the city clerk. (2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.”

Neither of the above quoted provisions of Montana law contain any reference to supporting Montana state laws. The prescribed oath of office in Montana is to support, protect and defend both the United States and Montana Constitutions.

CONCLUSION(S):

The Constitutional and statutory oath of office that city local government elected officials take is to support, protect and defend both the United States and state of Montana Constitutions.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN: dj