

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2010-006

TO: John Engen, Mayor; City Council; Bruce Bender; Brentt Ramharter; Ginny Merriam; Marty Rehbein; Nikki Rogers; Kelly Elam; Gail Verlanic;

CC: Dept. Atty.

FROM: Jim Nugent

DATE March 8, 2010

RE: Disposal and Lease of Municipal Property Pursuant to Montana State Laws

FACTS:

During recent months there have been several city staff inquiries pertaining to disposal of municipally owned property. The most common factor seemed to relate to potential excess city lands or real property related to sales to generate money, potential relationship to park land, as well as for low-income housing as a result of 2009 Montana State Legislative amendments to §7-8-2401 MCA entitled "Disposal and Lease of Municipal Property".

ISSUE(S):

Are there Montana state laws governing at least to some extent, a municipal government's disposal of property.

CONCLUSION(S):

Yes. Several Montana state statutes, such as subsection 7-1-4124(9), 7-8-101 through 7-8-104 and 7-8-4201 MCA address potential disposal or trade of municipal properties.

LEGAL DISCUSSION:

Subsection 7-1-4124(9) MCA pertaining to municipal powers provides that a municipal government has the power "(9) to make grants and loans of money, property and services for public purposes". (Emphasis added.) Further, §7-8-4201 MCA entitled "Disposal and Lease of Municipal Property" primarily sets forth process and procedure as follows:

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, donate, or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease, donation, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.

(5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

(Emphasis added.)

The 2009 Montana State Legislative amendments inserted “donate” in subsection (1), “donation” in subsection (2) and inserted new subsections (5) and (6) in §7-8-4201 MCA, sections 7-8-101 through 7-8-104 MCA pertain to transfers of property between government entities and acceptance of gifts and donations by governments. These sections provide:

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of intent by publication as provided in 7-1-2121, may sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require,

any property, however held or acquired, that is not necessary for the conduct of the county business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of the intent by publication as provided in 7-1-4127, may sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the city or town business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county may trade with or purchase from any city, town, or political subdivision any property without an appraisal of the property traded or purchased.

(b) A city or town may trade with or purchase from any county or political subdivision any property without an appraisal of the property traded or purchased. (Emphasis added.)

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

(Emphasis added.)

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or

watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

(Emphasis added.)

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

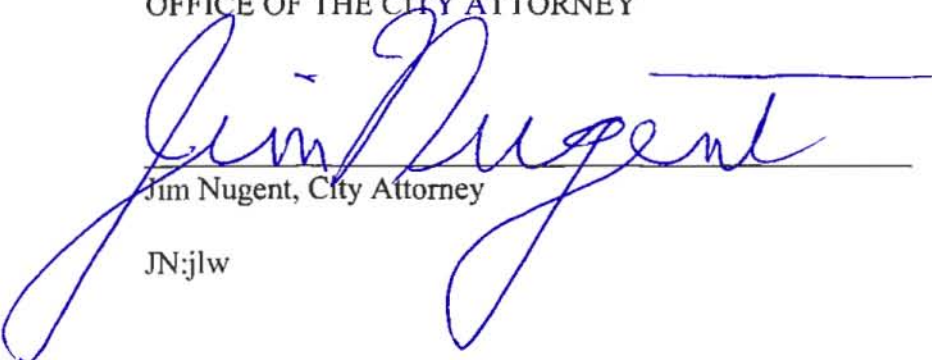
(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

The purpose of this legal opinion is to set forth Montana's statutes on the topic of disposal of municipal lands. This legal opinion does not attempt to identify, note or discuss any Montana Supreme Court decisions or Attorney General opinions discussing any of the state statutes mentioned herein.

CONCLUSION(S):

Yes. Several Montana state statutes, such as subsection 7-1-4124(9), 7-8-101 through 7-8-104 and 7-8-4201 MCA address potential disposal or trade of municipal properties.

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Jim Nugent, City Attorney

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