

OFFICE OF THE CITY ATTORNEY

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

Legal Opinion 2011-013

TO: Mayor John Engen, City Council, Bruce Bender, Marty Rehbein, Ginny Merriam

CC: Dept. Mayor, Dept. City Clerk; Dept. Attorney

FROM: Jim Nugent, City Attorney

DATE July 22, 2011

RE: City council rules allow city council committees to conduct business without a quorum as long as any report or recommendation notes that a quorum was not present.

FACTS:

Montana state municipal government law may determine the rules of its proceedings and may state that a municipal city council may prescribe its rules. The Missoula City Council has adopted approximately 34 city council rules that are compiled on approximately 14 pages of city council rule text, including a provision that a committee meeting may be conducted in the absence of a quorum. Missoula City Council committees are advisory to the city council itself. City council committees may make recommendations to the city council.

ISSUE:

Do Missoula City council rules of for the conduct of city council meetings and committee meetings authorize publicly-noticed and open city council committees to conduct business in the absence of a quorum?

CONCLUSION:

Yes. Montana municipalities are authorized, pursuant to Montana state law, to determine the rules of their proceedings and to prescribe their own rules. Pursuant to Missoula City Council rule 21(A), the Missoula City Council has authorized publicly-noticed and open city council committees to conduct business in the absence of a quorum.

LEGAL DISCUSSION:

Montana municipal government laws expressly authorize Montana municipal city councils to determine the rules of their proceedings and to prescribe their rules. Section 7-5-4103 MCA of Montana's general municipal government laws authorizes a city council to "*Determine the rules of its proceedings.*" (Emphasis added). 7-5-4103 MCA provides:

"7-5-4103. Council rules and discipline. *The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected.*" (Emphasis added).

Also, when discussing a city council's ability to compel the attendance of absent member, 7-5-4121(1) MCA provides that such compulsion of attendance of city council members may occur "*under such rules and penalties as the council may prescribe.*" (Emphasis added).

The Missoula City Council rules are entitled "City Council Rules for the Conduct of Meetings and Business." The Missoula City Council's 34 city council rules for the conduct of its meetings and business must be read together and always read in proper context. Pursuant to Missoula City Council rule 3, city council meetings and committee meetings must be publicly noticed. Missoula City Council rule 4 provides that all city council meetings shall be open to the public. Also, Missoula City council rule 21(A), entitled Committee and Subcommittee Meetings (A) Conduct of Committee Meetings, provides that city council committee and subcommittee meetings shall conform to Montana open-meeting laws. Specific provisions of city council rules must be interpreted within the entire context of the city council rules.

Missoula City council Rule 21(A) provides, in its entirety, as follows:

Rule 21. Committee and Subcommittee Meetings

A. Conduct of Committee Meetings

Committees and subcommittees are public bodies whose meeting shall conform to the Montana Open Meeting Law. At all committee meetings public comment will be taken for non agenda items that relate to the business of the committee. Public comment will also be taken for all agenda items and will follow any staff presentations to the committee. The chair of the committee may reasonably limit public comment. A majority of the members of a committee or subcommittee constitutes a quorum. *A committee may conduct business in the absence of a quorum; but when it does so, the fact shall be noted in the report or recommendation.* Procedures in committee are generally modeled on Mason's Rules and may be modified on a one-time or continuing basis at the discretion of the majority of the committee. (Emphasis added).

Since the Missoula City Council does not meet daily, and sometimes does not even meet every week, there are some sound common-sense reasons for the Missoula City Council to adopt city council rules for the conduct of its meetings to allow its advisory city council committees to

be able to conduct business in the absence of a quorum and to note that fact in any city council committee report or recommendation. Some of these reasons include:

- (1) Pursuant to Missoula City council rule 3, public notice and posting of the committee meeting has already occurred.
- (2) Public citizens, citizens from other entities, city staff members, and some city council members have made the effort in their respective busy schedules to be in attendance at the publicly announced time for the committee meeting.
- (3) Automatic adjournment of a city council committee meeting due to a lack of a quorum would be an inconvenience to everyone who has shown up for the city council committee meeting.
- (4) Some city council committee agenda items are time sensitive, such as subdivision approvals that have statutory time limits, payments of claims, or approval of important contracts that require the city council to attempt to timely process the agenda item.
- (5) City council committees do not have final decision making authority.
- (6) City council committees are advisory to the city council, and the final decisions on any agenda item are made at the city council meeting, not the city council committee meeting.

Pursuant to Missoula city council, Rule 5 entitled Parliamentary Authority, the Missoula city council has established that its own city council rules for the conduct of council meetings and business guide the conduct of their meetings, with Mason’s Manual of Legislative Procedure as a guiding source that the city council turns to “in all cases not covered by these (city council) rules.” Thus, pursuant to Missoula City Council Rule 21(A), the Missoula City Council rules control and expressly authorize that “*a committee may conduct business in the absence of a quorum; but when it does so, the fact shall be noted in the report or recommendation.*” (Emphasis added).

However, there are some provisions in Mason’s which recognize that adjournment due to a lack of a quorum is not automatic. Sometimes there are reasons that legislative bodies continue to meet even though a quorum might not be present. For example, Mason’s Manual of Legislative Procedure pursuant to section 210 provides:

Section 210. *Absence of Quorum Does not Adjourn Body.* Where a roll call shows there is not a quorum present, it does not automatically adjourn the body. *If a quorum is established prior to adjournment, the transaction of business can be continued.*” (Emphasis added).

Further, some interesting subsections pursuant to Mason’s section 505 entitled “Procedure on Absence of a Quorum” are set forth in subsections 2, 7, 8 and 9. They provide:

- (2) When no quorum is present, a call of the house can be ordered and the attendance of absent members compelled. The body can cancel all leaves of absence and require the attendance of all members.

[. . .]

(7) When an action has been completed, it is too late to raise a point of order that no quorum was present when the action was taken, but when an action requiring a quorum is taken after the absence of a quorum has been ascertained, the action is null and void.

(8) When the journal shows a quorum present, it will be presumed that a quorum continues to be present unless that presumption is contradicted by the journal itself.

(9) Debate may continue in the absence of a quorum unless some member raises that point. A member speaking is entitled to insist on the presence of a quorum.”

These subsections are merely noted for general interest purposes. For purposes of Missoula City Council meeting rules, Missoula City Council rule 21(A) provides that “*a committee may conduct business in the absence of a quorum, but when it does so, the fact shall be noted in the report or recommendation.*” (Emphasis added).

CONCLUSION:

Yes. Montana municipalities are authorized, pursuant to Montana state law, to determine the rules of their proceedings and to prescribe their own rules. Pursuant to Missoula City Council rule 21(A), the Missoula City council has authorized publicly-noticed and open city council committees to conduct business in the absence of a quorum.

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Jim Nugent, City Attorney

JN: mdg