

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2013-018

TO: Mayor John Engen, Bruce Bender, Leigh Griffing, Scott Paasch, Marty Rehbein,
Doug Waters

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: August 30, 2013

RE: Definition of the term “Immediate Family” for City Cemetery purposes.

FACTS:

Cemeteries, such as the City of Missoula cemetery, that sell cemetery internment rights to specific plots of land in advance of any immediate burial need for utilization of those cemetery internment rights to specific plots of land, experience a broad spectrum of factual scenarios of relationships that evolve over time that raise confusion as to who ultimately might have rights to utilize the specific internment rights that were purchased. Therefore, it may be important for the applicable cemetery rules and regulations to include a definition of “immediate family” for cemetery administration purposes. You have requested assistance in identifying established definitions of “immediate family” that could be considered by the City of Missoula cemetery for inclusion in its rules and regulations pertaining to the City of Missoula city cemetery.

ISSUE(S):

Does Montana state law provide a state law definition of the term “immediate family”?

CONCLUSION(S):

Yes, Montana state law sets forth several definitions of the term “immediate family”. However, several of these Montana state law definitions are narrowly drawn to serve the specific area or topic of law that is being addressed by that specific state laws and will likely be too narrow for consideration for city cemetery administration purposes.

LEGAL DISCUSSION:

Initially, note that Black’s Law Dictionary, Eighth Edition, page 638 sets forth the following definition(s) of “immediate family”

“IMMEDIATE FAMILY. 1. A person’s parents, spouse, children and siblings. 2. A person’s parents, spouse, children, and siblings, as well as those of the person’s spouse. * Stepchildren and adopted children are usually immediate family members. For some purposes, such as taxes, a person’s immediate family may also include the spouses of children and siblings.”

Montana state law sets forth several state law definitions of “immediate family” for various specific law purposes as follows:

- (1) Montana special income tax application law, pursuant to subsection 15-30-3002(5) MCA defines “immediate family members” as meaning: “(5) ‘Immediate family members’ means family members that are within the second degree of consanguinity or affinity”
- (2) Montana alcohol licensing law defines “immediate family” pursuant to subsection 16-1-106(13) MCA as meaning “(13) ‘Immediate family’ means a spouse, dependent, children, or dependent parents.
- (3) Montana horseracing law defines the term “immediate family” in subsection 23-4-101(7) MCA as meaning: “(7) ‘Immediate family’ means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.”
- (4) Montana gambling law defines “immediate family” in subsection 23-5-629(2)(e) as meaning “(e) ‘Immediate family’ means a parent, children, siblings, grandchildren, grandparents, nieces and nephews.”
- (5) Montana law pertaining to right to work without union interference in certain small businesses defines the term “immediate family” in section 39-33-102 MCA as meaning: “Immediate family defined. ‘Immediate family’ includes the owner, the owner’s spouse, and any children under the age of 18 years.”
- (6) Montana’s Subdivision and Platting Act defines the term immediate family in subsection 76-3-103(8) MCA as meaning “(8) ‘Immediate family’ means a spouse, children by blood or adoption, and parents.”

Montana’s fish and wildlife hunter management program providing tangible benefits to property owners providing hunting access defines the term “immediate family member” pursuant to subsection 87-1-266(4)(b) MCA as meaning: “(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child or grandchild of the cooperators by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperators or spouse, or a niece or nephew.”

CONCLUSION(S):

Yes, Montana state law sets forth several definitions of the term “immediate family”. However, several of these Montana state law definitions are narrowly drawn to serve the specific area or topic of law that is being addressed by that specific state laws and will likely be too narrow for consideration for city cemetery administration purposes.

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/s/

Jim Nugent, City Attorney

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