

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2013-025

**TO:** Mayor John Engen, City Council, Mayor's Office Staff, City Clerk's Office staff,  
Human Resources Office Staff

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** November 22, 2013

**RE:** Municipal Housing Authority Commissioners may not also be City Officials.

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### FACTS:

There are many instances where elected city council members may also serve on municipal boards, commissions, authorities, etc. However, the Montana State Legislature has indicated that a Montana Municipal Official may not be a Municipal Housing Authority Commissioner.

### ISSUE(S):

May a Montana Municipal Official also simultaneously be a Housing Authority Commissioner?

### CONCLUSION(S):

No, subsection 7-15-4431(1) MCA of Montana's municipal housing authority law provides that a City Official may not be a Municipal Housing Authority Commissioner.

### LEGAL DISCUSSION:

Title 7, chapter 15, part 44 Montana Code Annotated (MCA) is entitled "MUNICIPAL HOUSING AUTHORITIES". Section 7-15-4431 MCA entitled "APPOINTMENT OF COMMISSIONERS" STATES AS FOLLOWS:

**7-15-4431. Appointment of commissioners.** (1) An authority consists of seven commissioners appointed by the mayor. The mayor shall designate the first presiding officer. A commissioner may not be a city official.

(2) Two of the commissioners must be directly assisted by the housing authority and are known as resident commissioners. The staff of the housing authority may not involve itself in the nomination or appointment of resident commissioners, except that the housing authority shall notify all of the households directly assisted by the housing

authority when a resident commissioner position is vacant.

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the proper appointment of the commissioner.

Section 7-15-4432 MCA is entitled "TERM OF OFFICE" and states:

**7-15-4432. Term of office.** (1) Subject to subsection (2), the commissioners who are first appointed must be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 5 years.

(2) The resident commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. After the initial appointments, the term of office is 2 years.

(3) A commissioner shall hold office until the commissioner's successor has been appointed and qualified.

**CONCLUSION(S):**

No, subsection 7-15-4431(1) MCA of Montana's municipal housing authority law provides that a city official may not be a municipal housing authority commissioner.

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/s/

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Jim Nugent, City Attorney

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