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Legal Opinion 2014-023

TO: Mayor John Engen; City Council; Bruce Bender; Ginny Merriam; Marty Rehbein; Kelly Elam; Ellen Buchanan; Chris Behan; Donna Gaukler; Anne Guest; Kevin Slovarp; Ron Regan; Don Verrue; Mike Brady; Scott Hoffman; Jason Diehl

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: August 11, 2014

RE: Any committee or subcommittee appointed by a City Council must abide by Montana's right to know and public participation open meeting constitutional provisions and state laws.

FACTS:

During a recent city council committee of the whole meeting questions arose concerning a subcommittee/task force needing to comply with Montana public participation laws. A city council committee appointed task force is a sub-committee. Any city council appointed subcommittee must be open to the public and must comply with Montana's public notice and public participation laws.

ISSUE:

Are sub-committees of a city council committee required to comply with Montana's public meeting, participation and record keeping laws?

CONCLUSION:

Yes, pursuant to subsection 2-3-202(6) MCA and Montana's Constitution, generally all meetings of government bodies including municipal city council committee appointed subcommittees must be conducted in public pursuant to Montana's right to know, public notice and public participation open meeting and public record keeping laws.

LEGAL DISCUSSION:

Mont. Code Ann. § 2-3-203(6) of Montana's open meeting laws expressly provides that "[a]ny committee or subcommittee appointed by a public body . . . for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section."

Mont. Code Ann. § 2-3-212 provides that appropriate minutes of all public meetings must be kept and made available for public discussion. This state law also sets forth minimum requirements for what must be included in the minutes.

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

(b) a list of the individual members of the public body, agency, or organization who were in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

Montana's constitutional right of participation and right to know provisions expressly establish rights of citizens to participate in as well as to observe the deliberations of all public bodies including boards, committees and commissions as well as their committees and subcommittees. Mont. Const. art. II, §§ 8 and 9 provide:

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (Emphasis added.)

Local governments are political subdivisions of state government. All boards, committees, subcommittees and commissions are a public body of local municipal government. Any city council committee or subcommittee is subject to Montana's public participation, notice, meeting and record keeping laws.

Montana's open meeting law, pursuant to Mont. Code Ann. § 2-3-201 provides:

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. (Emphasis added.)

Mont. Code Ann. § 2-3-203 of Montana's public participation open meeting law provides:

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency. (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2). (5) The Supreme Court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section. (Emphasis added).

Pursuant to Mont. Code Ann. § 2-3-103, public participation includes allowing at each public meeting public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the public entity conducting the meeting.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request. (Emphasis added).

CONCLUSION:

Yes, pursuant to subsection 2-3-202(6) MCA and Montana's Constitution, generally all meetings of government bodies including municipal city council committee appointed subcommittees must be conducted in public pursuant to Montana's right to know, public notice and public participation open meeting and public record keeping laws.

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/s/

Jim Nugent
City Attorney

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