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Legal Opinion 2015-005

TO: City Council; Mayor John Engen; Bruce Bender; Ginny Merriam; Dale Bickell; Mike Haynes; Casey Wilson, GIS Planner; City Clerk Department

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE January 30, 2015

RE: City Council ward boundaries shall ensure that each City Council ward population is as equal in population as practically possible.

FACTS:

City of Missoula municipal elections are conducted each calendar year ending in an odd number. At least Six (6) City Council elected positions, one from each city council ward, is elected at each City of Missoula municipal general election. The City Council has an ongoing duty and responsibility prior to each municipal election to ensure that each city council ward population is as equal in population as practically possible.

ISSUE:

What is the city charter and Montana municipal government law standard with respect to establishing city council ward boundaries?

CONCLUSION:

The City of Missoula charter as well as Montana municipal government law provide that “population” is the primary guiding standard to be utilized by the Missoula City Council when establishing and/or reviewing city council ward boundaries prior to municipal City of Missoula elections pertaining to elected city council positions. The City of Missoula self-government charter also provides that city council wards be generally regular in shape.

LEGAL DISCUSSION:

Both the City of Missoula self-government charter adopted by Missoula voters June 4, 1996, effective January 1, 1997, as well as Montana municipal laws identify “population” as the primary guiding standard for establishing and/or reviewing the boundaries of city council wards.

The City of Missoula local government charter also provides that City Council ward boundaries shall “be generally regular in shape”. The City of Missoula charter adopted by the City of Missoula electorate, provides pursuant to Article II entitled “CITY COUNCIL”, section 3 that each city council ward shall be “as equal in population as practically possible”. Missoula City Charter, Article II, section 3, provides in its entirety as follows:

“3. CITY WARDS. The City Council shall have the authority to, by ordinance, determine the number of City wards. EACH WARD SHALL BE ESTABLISHED AND MAINTAINED BY THE CITY COUNCIL to be generally regular in shape and AS EQUAL IN POPULATION AS PRACTICALLY POSSIBLE. Each ward shall be represented on the City Council by two City Council members who shall reside in that ward. At the time of adoption of this Charter, the number of wards in the City shall be six (6).” (emphasis added)

Montana State municipal government law also provides that “population” be the guiding legal standard for establishing and maintaining city council ward boundaries. Section 7-5-4401 (1) MCA requires that city council wards be divided “having regard to population so as to make them as nearly equal as possible”. Section 7-5-4401 MCA provides:

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

(b) Cities of the second class must be divided into not less than three or more than six wards.

(c) Cities of the third class must be divided into not less than two or more than four wards.

(d) Towns must be divided into not less than two or more than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number and boundaries of wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors. (emphasis added)

Pursuant to subsection 7-3-113(1)(j) MCA identifying the statutory basis for municipal city council mayor form of local government, subsection 7-3-218(2) MCA pertaining to the mayor/city council (commission-executive) form of municipal local government provides that with respect to the selection of city council (commission) members the city council (commission) shall be:

“(2) ELECTED BY DISTRICTS IN WHICH CANDIDATES MUST RESIDE AND WHICH ARE APPORTIONED BY POPULATION” (emphasis added)

CONCLUSION:

The City of Missoula charter as well as Montana municipal government law provide that “population” is the primary guiding standard to be utilized by the Missoula City Council when establishing and/or reviewing city council ward boundaries prior to municipal City of Missoula elections pertaining to elected city council positions. The City of Missoula self-government charter also provides that city council wards be generally regular in shape.

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/s/ _____
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