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Legal Opinion 2015-021

TO: City Council; Mayor John Engen; Dale Bickell; Steve Johnson; Marty Rehbein; Kirsten Hands; Kelly Elam; Ellen Leahy; Jim Carlson; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; and Laurie Clark

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE July 21, 2015

RE: Montana state regulation of wild animal menageries and zoos including regulations for the housing, care, treatment, feeding and sanitation of animals.

FACTS:

The Missoula City Council Public Safety and Health committee is currently considering a proposed city ordinance to regulate the display or performance of wild and exotic animals.

ISSUE:

Are there State of Montana regulations pertaining to wild animal menageries and zoos?

CONCLUSION:

Yes. Pursuant to Title 87, Chapter 4, part 8 MCA the State of Montana has provided authority to the Montana Department of Fish, Wildlife and Parks to regulate roadside menageries, wild animal menageries and zoos.

LEGAL DISCUSSION:

Title 87 MCA is entitled "FISH AND WILDLIFE". Title 87, chapter 4 is entitled "COMMERCIAL ACTIVITIES". Title 87, chapter 4, part 8 MCA is entitled MENAGERIES AND ZOOS, setting forth sections 87-4-801 through 87-4-808 MCA. These Montana state laws were originally enacted in 1969.

Montana state law pertaining to MENAGERIES AND ZOOS" define the terms (1) roadside menagerie, (2) wild animal, (3) wild animal menagerie and (4) zoo in section 87-4-801 MCA as follows:

87-4-801. Definitions. As used in this part unless the context requires otherwise, the following definitions apply:

- (1) "Roadside menagerie" means any place where one or more wild animals, including birds, reptiles, and the like, are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.
- (2) "Wild animal" means an animal that is wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.
- (3) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats are kept in captivity for use other than public exhibition.
- (4) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing.

The Montana Department of Fish, Wildlife and Parks is the department of Montana state government that administers and regulates the provisions of Montana state law set forth in title 87 MCA. See subsection 87-1-101(3) MCA. Section 87-4-802 MCA instructs the Montana Department of Fish, Wildlife and Parks to adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, wild animal menageries and zoos. Section 87-4-802 MCA provides:

87-4-802. Department regulations. The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries, wild animal menageries, and zoos, for the protection of the public from injury by those animals, and for the licensing of roadside menageries, wild animal menageries, and zoos.

The Montana Department of Fish, Wildlife and Parks may grant permits for roadside menageries, wild animal menageries, and zoos pursuant to the statutory authority provided to it pursuant to section 87-4-803 MCA which provides as follows:

87-4-803. Permits. (1) The department may grant permits for roadside menageries, wild animal menageries, and zoos. Application for a permit must be made to the director on a form prescribed by the director. The annual permit fee for five or less animals is \$10. The annual permit fee for more than five animals is \$25. Permits expire on December 31 but may be renewed upon payment of the annual fee and submission of a renewal application. This section does not apply to the United States, the state of Montana, or any county or city. A person who subscribes to any false statement in application for a permit is subject to the provisions of 87-6-715 and may be denied a permit.

- (2) (a) A permit application for a roadside menagerie must include:
 - (i) the applicant's name and address;
 - (ii) the exact location of the facility;
 - (iii) a list of species and the number of animals to be held in the facility;
 - (iv) the type of facility contemplated, including cage specifications;

- (v) a copy of all required federal permits for exhibition of wild animals; and
- (vi) a copy of a liability insurance policy to cover bodily injury or property damage.
- (b) A permit application for a wild animal menagerie must include:
 - (i) the applicant's name and address;
 - (ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;
 - (iii) a list of species and the number of animals to be held in the facility;
 - (iv) the type of facility contemplated, including cage specifications; and
 - (v) information demonstrating that the applicant is responsible.
- (c) A permit application for a zoo must include:
 - (i) the applicant's name and address;
 - (ii) the exact location of the facility;
 - (iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;
 - (iv) a copy of the required federal permits for exhibition of wild animals; and
 - (v) if applicable, a copy of the American zoo and aquarium association accreditation program specific to the facility.
- (3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.
- (4) A permit may not be granted by the department until it has satisfactorily verified that the provisions for housing and caring for the animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.
- (5) A permit is not transferable to another person.

Further, section 87-4-804 MCA pertains to persons being required to obtain permits from the Montana Department of Fish, Wildlife and Parks for obtaining wild animals and provides:

87-4-804. Permit to obtain wild animals. (1) It is unlawful to obtain wild animals for a roadside menagerie, wild animal menagerie, or zoo by capture from the wild or by purchase except as authorized by the department in accordance with the terms of a permit.

(2) Application for a capture permit may be made only by a zoo and must be made to the director on a form prescribed by the director. After investigation by the department, the director may issue a capture permit without charge if the director finds:

(a) that all provisions of this part and of the department regulations are complied with by the applicant; and

(b) that the number and species of wildlife desired is not excessive under the circumstances.

(3) If wild animals are to be obtained by capture for use in zoos, the permit must designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana.

(4) Roadside menageries, wild animal menageries, and zoos may obtain captive-bred wild animals from a licensed zoo, menagerie, alternative livestock ranch, fur farm, game bird farm, or animal rehabilitation center.

(5) Wild animals may be bought, sold, or transferred under regulations that the department prescribes.

(6) The number of wild animals in a wild animal menagerie may not exceed 10.

It should also be noted that there is a Montana state municipal government law, section 7-21-4201 MCA, originally enacted in 1921 that authorizes Montana municipalities to license, tax and regulate circuses that provides:

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate: Yes. There is a statutory prohibition in Montana municipal government law that prohibits division of public contracts to thereby circumvent or avoid compliance with public contract bidding requirements. Pursuant to Montana law bidding requirements prevailing wages must be paid for all public work contracts the monetary cost of which is in excess of \$25,000.00. Further, pursuant to Section 7-5-4305, MCA there is a prohibition against utilizing several contracts, separate work graders or similar devices to circumvent or avoid public contract bidding requirements.

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

CONCLUSION:

Yes. Pursuant to Title 87, Chapter 4, part 8 MCA the State of Montana has provided authority to the Montana Department of Fish, Wildlife and Parks to regulate roadside menageries, wild animal menageries and zoos.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:tfa