

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2015-024

TO: Mayor John Engen; Dale Bickell; Steve Johnson; Leigh Griffing; John Wilson; Mike Haynes; Kevin Slovarp; Doug Harby; Gregg Wood; Don Verrue; Denise Alexander; Donna Gaukler; Kathy Mehring; Brian Hensel; Jack Stucky; Jessica Miller; Jason Diehl; Jeff Brandt; Chad Nicholson; Laurie Pfau; Mike Brady; Chris Odlin; Mike Colyer; Scott Hoffman; Carl Horton; Marty Rehbein; Wayne Gravatt; Scott Paasch; Starr Sullivan; Pat Brook; Richard Stepper; Laurie Clark; and Kirsten Hands

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: August 6, 2015

RE: Mayor as City of Missoula Chief Executive executes all documents on behalf of the City of Missoula.

FACTS:

It has arisen again that a city department or division has forwarded to our office a contract to be reviewed and approved and there is no signature line for the mayor to sign the document. There also are several relatively new city employees to be informed that the Mayor as the City's Chief Executive Officer shall execute all documents on behalf of the City of Missoula.

ISSUE:

Pursuant to City of Missoula Self-government Charter as well as pursuant to Montana municipal government law, who is to execute documents on behalf of the City of Missoula?

CONCLUSION:

The Mayor as City of Missoula Chief Executive Officer is the individual who is to execute all documents on behalf of the City of Missoula.

LEGAL DISCUSSION:

It is important that everyone be aware that the Mayor as the City's Chief Executive Officer is to sign all City documents. Contracts or agreements entered into on the City's behalf

must be approved by the mayor. The City of Missoula self-government charter adopted June 4, 1996 and effective January 1, 1997 sets forth ARTICLE III entitled “THE MAYOR”, which provides pursuant to ARTICLE III, section 4 as follows:

“4. DUTIES OF THE MAYOR. The Mayor shall execute all ordinances and resolutions passed by the City Council. The Mayor shall also execute all documents on behalf of the City following approval by the City Council. (emphasis added)

This provision of the City of Missoula city charter is consistent with applicable provisions of Montana state law pertaining to the applicable mayor city council form of government.

Section 7-3-113 MCA identifies provisions of title 7, chapter 3, part 2 MCA that pertain to a Montana municipal government self-government form of government that has a mayor/chief executive officer and a city council/city commission, unless the city elector adopted charter has a provision that is different. Subsection 7-3-113(1)(c) MCA indicates that section 7-3-203 MCA is applicable to the City of Missoula’s form of self-government local government. Subsection 7-3-203(7) MCA provides:

“7-3-203. DUTIES OF EXECUTIVE. The executive shall:

.....

(7) execute bonds, notes, contracts, and written obligations of the commission (council) subject to the approval of the commission (council)” (emphasis added)

Subsection 7-1-4114(2) MCA pertaining to municipal executive officers states:

“7-1-4114. MUNICIPAL EXECUTIVE OFFICERS.

.....

(2) The mayor is the chief executive officer of the city or town”.

Section 7-4-4303 MCA is entitled “POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, CITIZENS”. Subsection 7-4-4303(3) MCA provides:

“7-4-4303. POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, AND CITIZENS. The mayor has the power to:

.....

(3) supervise the discharge of official duty by all subordinate officers;”

Subsection 2.02.010 (C) Missoula Municipal Code (MMC) states basically the same law as subsection 7-4-4303(3) MCA set forth above.

It also is important to note that pursuant to Montana state law it is the mayor that exercises the rights on behalf of the municipal city government to petition, protest or vote on behalf of the municipal city government with respect to property owned by the municipal government. See section 7-1-4134 MCA entitled “RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION”. Section 7-1-4134 MCA provides as follows:

“7-1-4134. RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

CONCLUSION:

The Mayor as City of Missoula Chief Executive Officer is the individual who is to execute all documents on behalf of the City of Missoula.

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/s/ _____
Jim Nugent, City Attorney

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