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Legal Opinion 2015-030

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

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: September 15, 2015

RE: Montana local government public safety authority with respect to firearms pursuant to Montana state law.

FACTS:

An organization entitled Mom's Demand Action for Gun Sense in America likely will be requesting the Missoula City Council to consider adoption of a proposed ordinance addressing background checks for sales or transfer of firearms by persons other than licensed firearms dealers. It is also possible that possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens and minors could be part of the discussion, pursuant to statutory authority granted to Montana local governments pursuant to Montana state law.

ISSUE:

May Montana local governments for public safety purposes adopt local regulations pertaining to possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens and minors?

CONCLUSION:

Yes. Pursuant to subsection 45-8-351(2) MCA for public safety purposes a Montana local government has the power to prevent and suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

LEGAL DISCUSSION:

Article II of the Montana Constitution is entitled "Declaration of Rights". Article II, section 12 of the Montana Constitution entitled "Right to Bear Arms" provides:

“**Section 12. Right to bear arms.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.”

Section 7-1-111 MCA pertains to the powers denied Montana local governments with self-government powers. Subsection 7-1-111(9) MCA states as follows:

“**7-1-111(9). Powers denied.** A local government unit self-government powers is prohibited from exercising the following:

(9) any power that applies to or affects the right to keep and bear arms, except that a local government has the power to regulate the carrying of concealed weapons;”

Section 45-8-345 MCA of Montana’s Criminal Code is entitled “RESTRICTION ON LOCAL GOVERNMENT REGULATION OF FIREARMS...Section 45-8-351 MCA provides:

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317. (emphasis added)

Subsection 45-8-351(2) MCA for public safety purposes empowers a Montana county or city local government to prevent and suppress “the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens and minors”.

CONCLUSION:

Yes. Pursuant to subsection 45-8-351(2) MCA for public safety purposes a Montana local government has the power to prevent and suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

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/s/

Jim Nugent, City Attorney

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