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Legal Opinion 2015-032

TO: City Council; Mayor John Engen; Dale Bickell; Marty Rehbein; Kelly Elam; Kirsten Hands; Ginny Merriam; Steve Johnson

CC: Human Resources Department Staff and Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: November 5, 2015

RE: Terms of all municipal officers elected at municipal election commence on first Monday in January after such municipal election.

FACTS:

On November 3, 2015 there were six (6) city council elections, one for each of six city council wards. The City did not place the remaining sixty three (63) days of former City Council member Caitlin Copple's term of office on the November 3, 2015 ballot.

ISSUE:

When do persons elected at a municipal election take office?

CONCLUSION:

Pursuant to Section 7-4-4107, MCA the terms of all municipal officers elected at a municipal election are to commence on the first Monday in January after such municipal election.

LEGAL DISCUSSION:

Pursuant to section 7-4-4107 MCA the terms of all elected municipal government officers commences on the first Monday in January after such election.

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.
(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment.

However, when a person is selected by the city council to fill a vacant city elected position and the remainder of that vacant term of elected office is placed on a City election ballot, the person's appointment to fill that vacancy only continues until a person is elected and qualified for the city elected office. The remaining nine (9) weeks or sixty-three (63) days of City Council member Caitlin Copple's term of office was not placed on the November 3, 2015 Municipal election ballot.. Section 7-4-4112 MCA entitled FILLING OF VACANCY provides as follows:

7-4-4112. Filling of vacancy. (1) When a vacancy occurs in any elective office, this position is considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office is limited to the unexpired term of the person who originally created the vacancy. Pending an election and qualification, the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as a city council member. The appointed city council member shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of city council member must be filled from the ward in which the vacancy exists. (emphasis added)

The Missoula City charter also contains a similar provision. Article VIII, section 2 of the Missoula city charter provides:

2. Filling of vacancies. (1) When any vacancy occurs in any elective office, unless otherwise provided for by state or federal law, this position shall be considered open and subject to nomination and election at the next general City election in the same manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the City Council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until the successor is elected and qualified. (2) If all City Council positions become vacant at one time, the board of county commissioners shall appoint, in accordance with state law, persons within 5 days to hold office as City Council members. The appointed City Council members shall then appoint persons to any other vacant elective offices in the manner provided by state law. (3) A vacancy in the office of City Council member must be filled by an elector from the ward in which the vacancy exists. City of Missoula Charter 11

3. Standards of conduct. Officials and employees of the City of Missoula shall be subject to the applicable rules of conduct set forth by the Code of Ethics and other laws of the State of Montana. (emphasis added)

As noted earlier herein the remaining nine (9) weeks (sixty-three (63) days) of former City Council member Caitlin Copple's City Council term of office was not placed on the November 3, 2015 City election ballot.

CONCLUSION:

Pursuant to Section 7-4-4107, MCA the terms of all municipal officers elected at a municipal election are to commence on the first Monday in January after such municipal election.

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/s/ _____
Jim Nugent, City Attorney

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