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Legal Opinion 2017-001

TO: Mayor John Engen; Dale Bickell; Leigh Griffing; Steve Johnson; Scott Paasch; Marty Rehbein; Kirsten Hands

CC: Attorney Department

FROM: Jim Nugent, City Attorney

DATE January 6, 2017

RE: No explicit statutory time limits on timing of local government budget fiscal year amendments

FACTS:

Auditors auditing the city fiscal year budget for fiscal year 2016 inquired about the timing of the City of Missoula's final fiscal year budget amendment that city finance staff conscientiously presented to the City Council governing body in an effort to make the fiscal year budget as accurate as possible. Historically, the final budget amendment for a fiscal year generally occurs after the final calendar day of a fiscal year; because practically speaking the most accurate revenue numbers and expenditures for items being reviewed, processed and public hearings held by the governing body take several weeks of time to conclude after the revenues are received or the expenditures incurred. A preferred prudent best practice would be to process fiscal year budget amendments during the calendar time period when the fiscal year is occurring. However, practically speaking it is not realistically possible to be able to achieve city council adoption of all fiscal year budget amendments during the fiscal year time period during which they occur.

ISSUE(S):

Does subsection 7-6-4006(4) of Montana's LOCAL GOVERNMENT BUDGET ACT permissibly authorizing a local government governing body to amend a fiscal year budget during a fiscal year, statutorily limit fiscal year budget amendments to the calendar time period during which the fiscal year occurs and/or statutorily prohibit a fiscal year budget amendment from occurring after the conclusion of the calendar year time period associated with a specific fiscal year?

CONCLUSION(S):

Subsection 7-6-4006(4) MCA authorizes a Montana local government governing body to amend a fiscal year budget during the fiscal year. There is no statutory language in subsection 7-6-4006(4) MCA that either requires that all fiscal year budget amendments must occur during the calendar time period for that fiscal year or that specifically prohibits the amendment of a fiscal year budget after the calendar time period for a fiscal year in order to more accurately and precisely state the fiscal year budget or to “true up” the fiscal year budget with more accurate information.

LEGAL DISCUSSION:

The Montana “LOCAL GOVERNMENT BUDGET ACT” is set forth in title 7, chapter 6, part 40 MCA. Section 7-6-4006 MCA is entitled “APPROPRIATION POWER-REQUIREMENTS” and states as follows:

7-6-4006. Appropriation power -- requirements. (1) A governing body may appropriate money and provide for the payment of the debts and expenses of the local government.

(2) Money may not be disbursed, expended, or obligated except pursuant to an appropriation for which working capital is or will be available.

(3) Appropriations may be adjusted according to procedures authorized by the governing body for:

(a) debt service funds for obligations related to debt approved by the governing body;

(b) trust funds for obligations authorized by trust covenants;

(c) any fund for federal, state, local, or private grants and shared revenue accepted and approved by the governing body;

(d) any fund for special assessments approved by the governing body;

(e) the proceeds from the sale of land;

(f) any fund for gifts or donations; and

(g) money borrowed during the fiscal year.

(4) The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings. Budget amendments providing for additional appropriations must identify the fund reserves, unanticipated revenue, or previously unbudgeted revenue that will fund the appropriations.

Subsection 7-6-4006(3) MCA, quoted above specifically recognizes and authorizes that “appropriations may be adjusted according to procedures authorized by the governing body for:” seven (7) statutorily identified general purposes that are set forth in 7-6-4006(3) MCA. Immediately after statutorily recognizing that appropriations may be adjusted, in obvious recognition that at least some budget appropriation adjustments may necessitate a fiscal year budget amendment, subsection 7-6-4006(4) MCA of this Montana local government budget law provides that “The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings.” It is also obvious that the Montana State

Legislature also recognized that there could be multiple budget amendments that occur; because the statutory language is stated in the plural with respect to “public hearings” and “at regularly scheduled meetings”.

It is also important to note that the statutory language set forth in subsection 7-6-4006 MCA does not either specifically limit or restrict a fiscal year budget amendment to occurring during the calendar time period that the fiscal year occur; nor does it prohibit a Montana local government from adopting a fiscal year budget amendment after the calendar time period of a fiscal year has concluded. These are important legal points to note; because pursuant to the Montana rules of statutory construction, when interpreting a law, a judge is not allowed to insert language that the state legislature has failed to include in the law itself.

Section 1-2-101 MCA of Montana’s rules of statutory construction pertains to the role of the judge when interpreting laws and states:

1-2-101. Role of the judge -- preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Further, it is another rule of statutory construction that the intent of what is being interpreted is to be determined by the plain meaning of the words used. See *MM&I, LLC V. Board of County Commissioners*, 2010 MT 274, 358 Mont. 420, 246 P. 3d 435; 2010 Mont. LEXIS 435 (under the language of 76-3-608, and in accordance with the plain meaning rule of interpreting statutes, consultation with the subdivider is required only when mitigation is required) and *City of Great Falls v. Montana Department of Public Service Regulation*, 2011 MT 144; 361 Mont. 69; 254 P 3d 595, 2011 Mont. LEXIS 185 WHERE THE Montana Supreme Court stated in paragraph 18 that:

“In interpreting a statute, a court’s duty ‘is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or omit what has been inserted ...’. (citation omitted) A court must attempt to implement the intent of the legislature when interpreting a statute by looking at the plain meaning of the words used... (citation omitted) ...”

CONCLUSION(S):

Subsection 7-6-4006(4) MCA authorizes a Montana local government governing body to amend a fiscal year budget during the fiscal year. There is no statutory language in subsection 7-6-4006(4) MCA that either requires that all fiscal year budget amendments must occur during the calendar time period for that fiscal year or that specifically prohibits the amendment of a fiscal year budget after the calendar time period for a fiscal year in order to more accurately and precisely state the fiscal year budget or to “true up” the fiscal year budget with more accurate information.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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