

# OFFICE OF THE CITY ATTORNEY

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## **Legal Opinion 2017-004**

**TO:** Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Jerry Odlin

**CC:** Attorney Department

**FROM:** Jim Nugent, City Attorney

**DATE** January 20, 2017

**RE:** Section 7-32-4105 MCA expressly prohibits a chief of police from providing service of process in a civil action or proceeding except when the city is a party to the civil action or proceeding.

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## **FACTS:**

Friday, January 20, 2017, a judge presiding in the Missoula County Courthouse issued a judicial civil standby letter to the sheriff and the sheriff forwarded the judicial order to city police to serve because the location address was inside the city limits. Basically, the sheriff attempted to have city police assist the court in a civil standby/civil proceeding matter, which city police have no authority to do except when the City is a party to the civil action or proceeding.

## **ISSUE(S):**

May a county or State judge or the county sheriff require city police chief to serve civil standby or civil process in a case in which the City of Missoula is not a party?

## **CONCLUSION(S):**

No. Section 7-32-4105 MCA expressly prohibits a chief of police from providing service of process in a civil action or civil proceeding except when the City is a party to the civil action or civil proceeding.

## **LEGAL DISCUSSION:**

The City of Missoula Police Department (MPD) Administration has expressed concern that the MPD is being asked by the county sheriff, contrary to §7-32-4105 MCA, to provide civil standby with respect to civil orders and civil process issued by a local judiciary presiding in the courthouse. Section 7-32-4105 MCA prohibits city police from serving civil process in civil actions or civil proceedings unless the city is a party to the civil proceeding. Further, the MPD is

not a part of Missoula County local government operations or state government operations with respect to District Court orders or the Sheriff's Department.

As set forth in §7-32-4105 MCA, the duties of the chief of police do not include serving a "process" in a civil action or proceeding except when the City or town is a party. See §7-32-4105 (2) MCA (emphasis added):

- 7-32-4105. Duties of chief of police.** (1) The chief of police:
- (a) shall execute and return all process issued by the city judge or directed to the chief of police by any legal authority and must be present and shall assist the city court regularly;
  - (b) shall arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;
  - (c) must have charge and control of all police officers, subject to rules that may be prescribed by ordinance, and report to the council all delinquencies or neglect of duty or official misconduct of police officers for action of the council;
  - (d) shall perform other duties that the council may prescribe.
- (2) **The chief of police has the same powers as a constable in the discharge of duties, but the chief of police may not serve a process in a civil action or proceeding except when a city or town is a party.**
- (3) Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating police officers.
- (Emphasis added)*

Subsection 7-32-4105 (2) MCA expressly prohibits a chief of police from providing service of process in a civil action or proceeding except when the city is a party to the civil action or proceeding. Several concerns arise if Missoula County Officials attempt to assign Civil Standby Orders to the city police: 1) it violates §7-32-4105(2) MCA; 2) it exposes the city to civil liability for violating §7-32-4105 (2) MCA and/or disputes about whether property was correctly legally obtained at civil standby by various parties; 3) it takes city police officers away from being available to respond to other citizen calls for police service; 4) it increases city police work loads; and 5) it involves a non-city, county or state governmental entity attempting to assign work to city police when county government has no jurisdiction to provide work assignments to city police employees

Section 7-32-4105(2) MCA, Duties of Chief of Police, prohibits the police from serving "an order in writing issued in the name of the state or of a court or judicial officer" except when the city is a party. Further, §1-1-202 MCA defines "process" and "writ" as:

**1-1-202. Terms relating to procedure and the judiciary.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

...

**(5) “Process” means a writ or summons issued in the course of judicial proceedings.**

...

**(8) “Writ” means an order in writing issued in the name of the state or of a court or judicial officer.**

Section 1-1-202(5) and (8) MCA (*Emphasis added*).

See also § 25-3-101(2) MCA which defines “process” as including all writs, warrants, summonses, and order of courts of justice or judicial officers.

**CONCLUSION(S):**

No. Section 7-32-4105 MCA expressly prohibits a chief of police from providing service of process in a civil action or civil proceeding except when the City is a party to the civil action or civil proceeding.

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/s/

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Jim Nugent, City Attorney

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