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Legal Opinion 2017-015

TO: Chief Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; John Engen; Dale Bickell; Jason Diehl; Jeff Brandt

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE June 20, 2017

RE: Montana traffic regulation laws allow law enforcement agencies to appoint civilian accident investigators authorized to provide assistance at the scene of accident incidents for the purpose of investigating the accident.

FACTS:

Issues recently arose pertaining to the employment status of a civilian accident investigator employed by a Montana law enforcement agency. Pursuant to City of Missoula employment duties and responsibilities, generally, police officers responding to a motor vehicle or vehicle accident incident perform traffic control, while a city police department employed accident investigator investigates the incident.

ISSUE(S):

Are civilian accident investigators allowed to be employed by a law enforcement agency to provide assistance at the scene of a vehicle accident incident?

CONCLUSION(S):

YES. Section 61-8-105, MCA, authorizes a law enforcement agency to employ public safety workers known as civilian accident investigators to assist at incidents involving accidents. The plain, clear, explicit meaning of civilian accident investigators means that the civilian accident investigator investigates.

LEGAL DISCUSSION:

Section 61-8-105, MCA, authorizing law enforcement's employment of civilian accident investigators is a law that is set forth in Montana's traffic regulation laws. Pursuant to the plain meaning of the word "investigators" or "investigate", civilian accident investigators are

employed by a law enforcement agency to investigate incidents related to traffic accident incidents involving traffic control as compared to non-traffic criminal incidents, such as thefts, sexual assaults, partner family member assaults, etc.; which civilian accident investigators are not employed to investigate.

Clear explicit language in section 61-8-105, MCA, authorizes a law enforcement agency to appoint civilian accident investigators to assist law enforcement. The plain, clear, explicit meaning of the word "investigator" is a person who investigates. Black's Law Dictionary, Eighth Edition, page 844 defines "investigate" as meaning "to inquire into (a matter) systematically." and "to make an official inquiry".

Clearly, investigators investigate. Pursuant to the rules of statutory construction, section 1-4-101, MCA, an interpreter of the law may not insert what has been omitted or omit what has been inserted by the legislative body that adopted the law. The plain meaning of the clear, explicit phrase "civilian accident investigator" is a civilian who investigates accidents pursuant to Montana's traffic regulations.

Section 61-8-105, MCA, states in its entirety:

61-8-105. Obedience to peace officers, flag persons, crossing guards, and public safety workers. A person may not willfully fail or refuse to comply with a lawful order or direction of a peace officer, flag person, crossing guard, or public safety worker pertaining to the use of the highways by traffic. For purposes of this section:

- (1) "peace officer" has the meaning provided in **7-32-303**; and
- (2) "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency.

The statutory definition of the term "public safety worker" includes among other persons, "a civilian accident investigator appointed by a law enforcement agency". The fact that subsection 61-8-105(2), MCA, makes reference to "a person who is authorized to provide assistance at the scene of an incident that requires traffic control" does not mean that the civilian accident investigator must direct traffic. There is no statutory language that requires a civilian accident investigator be assigned to direct traffic. Such an interpretation would be blatantly contrary to section 1-4-101, MCA, which prohibits inserting language into an interpretation that the legislative body did not expressly include as well as such an interpretation is blatantly inconsistent with the plain meaning of the clear, explicit statutory language "civilian accident investigator".

In the City of Missoula, it is the law enforcement peace officers/police officers that generally are assigned to control the traffic at the scene of a motor vehicle accident incident scene, while the civilian accident investigator investigates the accident. As noted earlier, investigators investigate.

Black's Law Dictionary, Eighth Edition defines "investigate" as meaning "to inquire into a (matter) systematically" and "to make an official inquiry". The Montana State Legislature intended for civilian accident investigators to investigate vehicle accidents when it adopted the authorization for a law enforcement agency to employ civilian accident investigators and set it forth in Montana's state law traffic regulations.

CONCLUSION(S):

YES. Section 61-8-105, MCA, authorizes a law enforcement agency to employ public safety workers known as civilian accident investigators to assist at incidents involving accidents. The plain clear, explicit meaning of civilian accident investigators means that the civilian accident investigator investigates.

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/s/

Jim Nugent, City Attorney

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