

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2017-025

**TO:** Mayor John Engen; City Council; Dale Bickell; Ginny Merriam; Mike Brady; Scott Hoffman; Chris Odlin; Mike Colyer; Richard Stepper; Laurie Clark; Rod Austin; Tiffany Brander; Jason Diehl; Gordy Hughes; Donna Gaukler; John Wilson; Ellen Buchanan; Kevin Slovarp; Marty Rehbein; Kirsten Hands; Kelly Elam; Steve Johnson; Judge Kathleen Jenks; Tina Reinicke

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** September 6, 2017

**RE:** Section 61-8-507 of Montana state law provides that persons may not stand on a highway for the purpose of soliciting employment, business or contributions from occupants of vehicles unless the solicitation is authorized by the city.

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### **FACTS:**

Public safety concerns arise for both motorists and pedestrians when pedestrians stand on a street or highway soliciting employment, business or contributions from occupants of vehicles on the street or highway. Police officers have requested legal advice as to what the applicable law provides.

### **ISSUE(S):**

Do Montana's motor vehicle and pedestrian traffic regulations address the factual circumstance of a person standing on a street or highway soliciting employment, business or contributions from the occupant of a vehicle?

### **CONCLUSION(S):**

Yes, section 61-8-507 MCA provides that a person may not stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority.

## **LEGAL DISCUSSION:**

Montana state motor vehicle traffic regulation law empowers Montana local government authorities to enact as ordinances regulations regulating traffic, pedestrians, vehicles and operators of vehicles “that are not in conflict with state law or federal regulations.” See subsection 61-12-101(1)(n), MCA.

Title 61 Montana Code annotated (MCA) is entitled “MOTOR VEHICLES”. Chapter 8 of this title is entitled “TRAFFIC REGULATION”. Part 5 of title 61, chapter 8 is entitled “PEDESTRIAN TRAFFIC” and generally establishes Montana state laws pertaining to pedestrians. Section 61-8-507 MCA pertains to solicitations by pedestrians while standing on a highway. This section provides:

“61-8-507. PEDESTRIAN SOLICITING RIDES, BUSINESS OR CONTRIBUTIONS. (1) A person may not stand on a roadway for the purpose of soliciting a ride. (2) A PERSON MAY NOT STAND ON A HIGHWAY FOR THE PURPOSE OF SOLICITING employment, business, or CONTRIBUTIONS FROM THE OCCUPANT OF A VEHICLE unless the solicitation is authorized by the proper jurisdictional authority.” *(Emphasis added)*

No City of Missoula ordinance exists that authorizes a person to stand on a highway to solicit employment, business or contributions from the occupant of a vehicle.

Title 61, chapter 8 MCA defines the term “highway” in subsection 61-8-102(2)(i) MCA as meaning:

“(i) ‘Highway’ has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.”

This definition of “highway” includes “ways” dedicated to “public use” and also cross references to a definition of “highway” set forth in section 61-1-101 MCA. Subsection 61-1-101(27) MCA defines the term “highway” as follows:

“(27) ‘Highway’ or ‘public highway’ means THE ENTIRE WIDTH BETWEEN THE BOUNDARY LINES OF EVERY PUBLICLY MAINTAINED WAY WHEN ANY PART OF THE PUBLICLY MAINTAINED WAY IS OPEN TO USE OF THE PUBLIC FOR PURPOSES OF VEHICULAR TRAVEL.” *(Emphasis added)*

As previously noted, no City of Missoula ordinance or Missoula Municipal Code provision exists authorizing a person to stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle.

It also is important to note and emphasize that, pursuant to Montana's rules of Statutory Construction, section 1-2-101, MCA, the role of the judge is "not to insert what has been omitted or to omit what has been inserted" when interpreting a law.

The legislative history for the Missoula City Council's current Pedestrian Solicitation ordinance explicitly indicates that the City Council was informed and aware that Montana state law expressly prohibited a person from standing on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle; so the City Council went along with Mayor John Engen's recommendation to not include, in the city Pedestrian Solicitation ordinance, a restatement of Montana state law providing that a person may not stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle. Obviously, it is readily apparent that a pedestrian standing in the highway is a public safety concern for both pedestrians and motorists.

The Missoula City Council minutes for the Public Health and Safety Committee dated January 22, 2014, when Mayor John Engen was proposing changes to the then existing Pedestrian Interference ordinance indicate that, during Mayor Engen's presentation, Mayor Engen specifically stated to the City Council committee members that he believed the issue of a person being prohibited from standing on a highway to solicit contributions was covered by state statute, section 61-8-507, MCA.

Also, downtown ambassador, Laurie Johnson, noted in the City Council record that it was her understanding that Montana state law would prohibit a person standing in the roadway soliciting contributions from occupants of a motor vehicle.

No City of Missoula ordinance exists that authorizes a person to stand on a highway to solicit contributions from the occupant of a vehicle.

### **CONCLUSION(S):**

Yes, section 61-8-507 MCA provides that a person may not stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority.

OFFICE OF THE CITY ATTORNEY

/s/

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Jim Nugent, City Attorney

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