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Legal Opinion 2018-013

TO: City Council; Mayor John Engen; Dale Bickell; Mike Brady; Scott Hoffman; Marty Rehbein; Ginny Merriam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 8, 2018

RE: Pursuant to 45-8-331 MCA Montana local governments are granted power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction or school.

FACTS:

A city council member has been discussing with some Missoula County election administrator representatives the potential for ensuring that election polling place locations be free of weapons, concealed or unconcealed during the conducting of the election.

ISSUE(S):

Does Montana state law empower Montana local governments to prevent and suppress the carrying of concealed or unconcealed weapons?

CONCLUSION(S):

Yes. Pursuant to subsection 45-8-351(2) MCA Montana local governments are empowered to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction or schools.

LEGAL DISCUSSION:

With respect to potential election polling locations, Montana state law pursuant to subsection 45-8-351(2) MCA expressly empowers Montana local governments to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building or schools. Section 45-8-351 Montana Code Annotated (MCA) provides:

“45-8-351. Restrictions on local government regulation of firearms. (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, licensee, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2)(a) For public safety purposes, a city, town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit HAS POWER TO PREVENT AND SUPPRESS THE CARRYING OF CONCEALED OR UNCONCEALED WEAPONS TO A PUBLIC ASSEMBLY, PUBLICLY OWNED BUILDING, PARK UNDER ITS JURISDICTION, OR SCHOOL and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative assembly officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided 45-8-317. (emphasis added)

Montana state criminal code defines the word “weapon” in subsection 45-2-101(79) MCA as meaning:

“(79) ‘Weapon’ means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.”

Black’s Law Dictionary, Eighth Edition, page 124 defines the term “assembly” as meaning:

“assembly. 1. A group of persons organized and united for some common purpose.”

With respect to election polling place locations pursuant to subsection 45-8-351(2) MCA, if the election polling place location is in a publicly owned building or at a school, a Montana local government may prevent and suppress the carrying of concealed or unconcealed weapons to a publicly owned building or school. In addition, if for some reason the public election polling place is at a location other than a publicly owned building or school; such as at a senior citizens center, subsection 45-8-351(2) MCA also empowers Montana local governments to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly. Pursuant to the above quoted definition of “assembly” from Black’s Law Dictionary, persons gathered together as a group for the united common purpose of conducting a public election should reasonably be considered a public assembly of persons organized and united for the common purpose of conducting a public election. The persons conducting and participating in the public election are

assembled for the public common purpose of conducting an election at the location where the election polling place is operating.

CONCLUSION(S):

Yes. Pursuant to subsection 45-8-351(2) MCA, Montana local governments are empowered to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction or schools.

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/s/

Jim Nugent, City Attorney

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