

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2018-016

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Scott Paasch, Steve Johnson, Marty Rehbein, Kirsten Hands, Ellen Buchanan, Chris Behan, Ginny Merriam.

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 21, 2018

RE: City budget shall be approved and adopted as well as city budget tax levies shall be fixed by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable value.

FACTS:

Monday evening August 20, 2018 during the city council meeting it appeared that a city council member did not understand that Montana state law establishes the deadlines by which a city fiscal year budget must be established. Pursuant to Montana state law, there is only one remaining regularly scheduled Monday evening city council meeting, August 27, 2018, for the Missoula City Council to fix or establish the tax levies for the fiscal 2019 budget year. Pursuant to Montana state law, September 3, 2018 is Labor Day legal holiday.

ISSUE(S):

Does Montana state law establish deadlines by which a city must approve and adopt its fiscal year budget as well as establish its tax levies for the next fiscal year?

CONCLUSION(S):

Sections 7-6-4024 and 7-6-4036 MCA pertaining to the adoption of Montana local government fiscal year budgets provides that the governing body shall both adopt a budget by resolution as well as fix the tax levy for the fiscal year budget by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable value from the Montana Department of Revenue.

LEGAL DISCUSSION:

Title 7, Chapter 6, Part 41 MCA is entitled the “LOCAL GOVERNMENT BUDGET ACT” and this part of the Montana Code Annotated is formally recognized as the “Local Government Budget Act. See 7-6-4001 MCA.

The local government’s fiscal year budget must be adopted by resolution and the effective date of the resolution is July 1, of the fiscal year no matter what the actual adoption date of the resolution is. See subsection 7-6-4030 MCA.

Pursuant to section 15-10-202 MCA pertaining to property tax levies, generally the Montana Department of Revenue by the first Monday in August “SHALL CERTIFY TO EACH TAXING AUTHORITY THE TOTAL TAXABLE VALUE WITHIN THE JURISDICTION OF THE TAXING AUTHORITY”. (Emphasis added) The procedure for calculating a mill levy is set forth in section 15-10-420 MCA.

Subsection 7-6-4024(3) MCA provides that the local government entity must finally approve and adopt a budget by the later of the first Thursday after the first Tuesday in September or within 30 calendar days of receiving the certified taxable value from the department of revenue. Section 7-6-4024 MCA provides:

“7-6-4024. HEARING ON PRELIMINARY BUDGET. (1) The governing body shall hold a hearing in accordance with the notice given pursuant to 7-6-4021. (2) Local government officials shall attend the budget hearing to answer questions on their proposed budget if called upon: (a) by the governing body; or (b) a taxpayer or resident. (3) The hearing may be continued from day to day and must be concluded and THE BUDGET FINALLY APPROVED AND ADOPTED BY RESOLUTION BY THE LATER OF THE FIRST THURSDAY AFTER THE FIRST TUESDAY IN SEPTEMBER OR WITHIN 30 CALENDAR DAYS OF RECEIVING CERTIFIED TAXABLE VALUES FROM THE DEPARTMENT OF REVENUE.” (Emphasis added)

During 2018, the first Thursday after the first Tuesday of September is Thursday September 6, 2018. Monday September 3, 2018 is Labor Day legal holiday and the Missoula City council generally does not meet on legal holidays.

Section 7-6-4036 MCA entitled “FIXING TAX LEVY” establishes the identical Montana state law deadline for a Montana local government to fix its respective tax levies. Section 7-6-4036 MCA provides:

“7-6-4036. FIXING TAX LEVY. (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality: (a) BY THE LATER OF THE FIRST THURSDAY AFTER THE FIRST TUESDAY IN SEPTEMBER OR WITHIN 30 CALENDAR DAYS AFTER RECEIVING CERTIFIED TAXABLE VALUES; (b) after approval and adoption of the final budget; and at levels that will balance the budgets as provided in 7-6-4034. (2) Each levy: (a) must be made in the manner provided by 15-10-201; and (b) is subject to 15-10-420.” (Emphasis added)

CONCLUSION(S):

Sections 7-6-4024 and 7-6-4036 MCA pertaining to adoption of Montana local government fiscal year budgets provides that the governing body shall both adopt a budget by resolution as well as fix the tax levy for the fiscal year budget by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving the certified taxable value from the Montana Department of Revenue.

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/s/

Jim Nugent, City Attorney

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