

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2018-019

TO: Mayor John Engen, City Council, Dale Bickell, Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Ginny Merriam, Marty Rehbein, Kirsten Hands, Donna Gaukler

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE September 24, 2018

RE: Montana Constitution Article II, section 12 “Right to Bear Arms” is not a specific source of legal authority permitting a person to carry a concealed weapon.

FACTS:

The City of Missoula City Council is considering a city ordinance regulation pertaining to possession of firearms at public assemblies, public owned buildings, parks under the city's jurisdiction as well as possession in schools. It is therefore important for City of Missoula officials to be aware of what the Montana Constitution actually states with respect to a person carrying concealed weapons; so that misinformation and misstatement assertions pertaining to the Montana Constitution are not accepted as being Montana Constitutional law.

ISSUE:

What does the Montana Constitution state with respect to a person carrying concealed weapons?

CONCLUSION:

The Montana Constitution explicitly states in it's Constitutional right to bear arms, Article II, section 12, that “nothing” in the right to bear arms provision “shall be held to permit the carrying of concealed weapons.”

LEGAL DISCUSSION:

Article II, section 12 of the Montana Constitution comprises the constitutional right to bear arms. Article II, section 12 provides as follows:

“Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of civil power when thereto legally summoned shall not be called in question, BUT NOTHING HEREIN CONTAINED SHALL BE HELD TO PERMIT THE CARRYING OF CONCEALED WEAPONS.” (Emphasis added).

Clearly Montana Constitution provision Article II, section 12 is not a specific source of legal authorization for permitting any person to carry a concealed weapon.

The second amendment to the United States Constitution does not specifically address the topic of a person carrying concealed weapons. The second amendment to the United States Constitution states:

“A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”

Subsection 45-8-351(2)(a) MCA is Montana statutory authority for Montana municipal governments that explicitly provides that a city “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”. Section 45-8-351 MCA is entitled “RESTRICTION ON LOCAL GOVERNMENT REGULATION OF FIREARMS”. Subsection 45-8-351(2)(a) MCA states:

“(2)(a) FOR PUBLIC SAFETY PURPOSES, A CITY or 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.” (Emphasis added).

CONCLUSION:

The Montana Constitution explicitly states in it’s constitutional right to bear arms, Article II, section 12, that “nothing” in the right to bear arms provision “shall be held to permit the carrying of concealed weapons.”

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/s/ Jim Nugent

Jim Nugent, City Attorney
JN:jb