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Legal Opinion 2019-012

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Mike Haynes, Mike Brady, Scott Hoffman, Jeremy Keene, Jeff Brandt, Gordy Hughes, Brad Davis, Marty Rehbein, Kirsten Hands, Kelly Elam, Ellen Buchanan, Donna Gaukler, Ginny Merriam, Carl Horton, Tiffany Brander, Dennis Bowman, Kevin Slovarp, Troy Monroe, Aaron Bowman, Logan McInnis,

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE May 17, 2019

RE: Newly enacted state laws go into effect October 1, unless a different specific effective date is stated in the enacted state law.

FACTS:

There appears to be some puzzlement, misunderstanding or confusion among some city employees as to the effective date of newly enacted Montana state laws.

ISSUE(S):

Generally, what is the effective date of newly enacted Montana state laws?

CONCLUSION(S):

Pursuant to section 1-2-201 MCA, newly enacted Montana state laws go into effect October 1 unless a different time is prescribed in the enacting legislation.

LEGAL DISCUSSION:

Montana state law pursuant to section 1-2-201 MCA provides that newly enacted Montana state laws go into effect on October 1, unless a different time is prescribed in the enacting legislation. Section 1-2-201 MCA states as follows:

“1-2-201. Statutes -- effective date. (1) (a) Except as provided in subsection (1)(b), (1)(c), or (1)(d), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution."

It should also be observed that pursuant to subsection 1-2-201(2) MCA set forth above provides that the enactment into law of a bill is effective either with or without the approval of the governor. This provision of law must be read in conjunction with and in harmony with the Governor's power to veto bills.

The Governor's Montana Constitutional power to veto is set forth in Article VI, section 10 of the Montana Constitution. Pursuant to provision VI, section 10(1) of Montana's Constitution if the Governor does not sign or veto the bill within 10 days after the delivery to the Governor, the bill shall become law. Montana Constitution, Article VI, section 10 entitled "VETO POWER" provides:

“Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 10 days after its delivery to him, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

CONCLUSION(S):

Pursuant to section 1-2-201 MCA, newly enacted Montana state laws go into effect October 1 unless a different time is prescribed in the enacting legislation.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney

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