

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2019-031

TO: Mayor John Engen, Dale Bickell, Steve Johnson, Leigh Griffing, Kathy Crego, Scott Paasch, Tiffany Brander, Janez Gingery, Marty Rehbein, Kirsten Hands, Kelly Elam, Ginny Merriam, Department Human Resources, Department Attorney

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE November 1, 2019

RE: Public body meetings, including public body committees and subcommittees to discuss and/or recommend public employee salaries and/or fringe benefits must be conducted in compliance with Montana's public participation and open meeting laws.

FACTS:

Inquiry has been made as to the ability as well as legality of the parking commission to conduct a closed meeting to discuss determination of salary for a parking commission employee.

ISSUE:

May a government public body close a meeting for the purpose of discussing and recommending what salary be paid a public employee?

CONCLUSION:

Montana law provides that public employee salaries, merit pay, vacation and sick leave, are public record. Public employee salaries are not personal private determinations that outweigh the public right to know. Public body meetings, including committees and subcommittees of a public body may not be closed to discuss the salary to be paid a public employee. The public has a constitutional and statutory right to know how its public monies are being spent and the factors that go into the decision making pertaining to the expenditure of public monies.

LEGAL DISCUSSION:

Montana's Constitution establishes Montana Constitutional mandates pertaining to Article II, section 8 RIGHT OF PARTICIPATION; Article II, section 9, RIGHT TO KNOW and Article II,

section 10, RIGHT OF PRIVACY> These three Montana Constitutional provisions state as follows:

Section 8. RIGHT OF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Montana's public participation in governmental operations are primarily set forth in title 2, chapter 3 MCA entitled "PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS" and Montana municipal government law sections 7-1-4141 through 7-1-4143 MCA. Section 2-3-203 MCA provides that all meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state or any political subdivision including their respective committees and subcommittees supported in whole or in part by public funds must be open to the public. See subsections 2-3-203(1) & (6) MCA.

Unless the presiding officer at a public body meeting determines that the discussion relates to matters of individual privacy and that the demands of individual privacy clearly exceed the merits of public disclosure the public body meeting and discussion must be open to the public. See 38 Attorney General Opinion 33(1979).

The salary to be paid a public employee with public monies is not a matter where the individual privacy of the public employee clearly exceeds the merits of public disclosure. Public employee salaries are subject to public inspection. 36 Attorney General Opinion 28(1975). Public employee hours worked including public employees claims for vacation, holiday and sick pay are subject to public disclosure. 44 Attorney General Opinion 32(1992). Also, it should be noted that the names, addresses, wages of private employees working on a publicly funded project is subject to public disclosure. See 43 Attorney General Opinion 6 (1989).

Pursuant to 54 Attorney General Opinion 3(2011), Montana Attorney General Steve Bullock summarized the holdings of several Montana Attorney General opinions stating at page 5, paragraph 20 of his opinion that:

(20) It is well established through previous opinions of this office that public employees' names, addresses, salary, job titles, merit pay, vacation and sick leave, dates of employment, and hours worked may be subject to

public disclosure. See 38 Op. Att'y Gen. No. 109(1980), 41 Op. Att'y Gen. No 35(1985), 43 Op. Att'y Gen. No. 6(1989), 44 Op. Att'y Gen. No. 32(1992). Such information helps the public to understand how the state is using its tax dollars and what budget priorities the state has set for those dollars. Accordingly, such information is crucial to fostering the public's trust in government."

CONCLUSION:

Montana law provides that public employee salaries, merit pay, vacation and sick leave, are public record. Public employee salaries are not personal private determinations that outweigh the public right to know. Public body meetings, including committees and subcommittees of a public body may not be closed to discuss the salary to be paid a public employee. The public has a constitutional and statutory right to know how its public monies are being spent and the factors that go into the decision making pertaining to the expenditure of public monies.

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/s/

Jim Nugent, City Attorney

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