

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2020-001

**TO:** Mayor John Engen, City Council, Dale Bickell, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Jeremy Keene, Mary McCrea, Dennis Bowman, Donna Gaukler, Betsy Willet, Grant Carlton, Ellen Buchanan, Eran Pehan, Chris Behan, Tiffany Brander, Jeff Brandt, Gordy Hughes, Brad Davis, Leigh Griffing, Scott Paasch, Mike Colyer, Scott Hoffman, Laurie Clark, Kevin Slovarp, Troy Monroe

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** January 2, 2020

**RE:** Pursuant to Montana Constitution Article, Section 9, right to know, no person shall be deprived of the right to observe the deliberations of public bodies, such as city council. No person shall be deprived of the right to observe public body deliberations. Public body deliberations must be conducted at public open meetings.

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### **FACTS:**

All public bodies in Montana must ensure that the deliberations of their public body or any of the public body's committees or subcommittees must occur at open public meetings observable by the public. Non-public record deliberations by members of a public body pertaining to matters that will be determined or decided by the public body violate the Montana Constitution as well as Montana state open meeting law.

### **ISSUE(S):**

In Montana does the public right to know include the right to observe the deliberations of members of a public body?

### **CONCLUSION(S):**

Yes, pursuant to Article II, Section 9, of the Montana Constitution, entitled RIGHT TO KNOW, no person shall be deprived of the right to observe the deliberations of all public bodies. Pursuant to Section 2-3-201 MCA of Montana's open meeting laws it is stated by the Montana State Legislature that it is the State Legislature's intent that actions and deliberations of all public agencies shall be conducted openly.

## **LEGAL DISCUSSION:**

Pursuant to Article II, Section 9, **RIGHT TO KNOW**, of the Montana Constitution as well as Section 2-3-201 MCA of Montana state law, no person shall be deprived of the right to observe the deliberations of all public bodies and those deliberations must be conducted openly at a public meeting of the public body. Article II, Section 9, of Montana's Constitution states:

“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.

The Montana Supreme Court in paragraph 15 of its decision in *Associated Press v. Crofts*, 2004 MT 120, 321 M 193, 89 P3d 971(2004) indicated that with respect to the public's Montana Constitutional right to observe the deliberations of a public body, the Montana State Legislature implemented this Constitutional right to observe a public body's deliberations primarily through Montana's open meeting laws indicating that the State Legislature created Montana's open meeting laws with the intent that deliberations of public agencies be conducted openly. Further, Montana's open meeting laws shall be liberally construed pursuant to Section 2-3-201 MCA and Montana Supreme Court decision.

Section 2-3-201 MCA states:

“2-3-201. **LEGISLATIVE INTENT-LIBERAL CONSTRUCTION**. The legislature finds and declares that public boards, commissions, councils, and other public agencies in the state exist to aid in the conduct of the people's business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of this part shall be liberally construed.”

The Montana Supreme Court in *Associated Press v. Crofts* supra noted that the provisions of Montana's open meeting laws are to be liberally construed pursuant to Section 2-3-201 MCA and then went on in paragraph 32 when again discussing Article II, Section 9, **RIGHT TO KNOW** to indicate that no person shall be deprived of the right to observe the deliberations of public bodies; while also indicating that government operates most effectively, most reliably and is most accountable when it is subject to public scrutiny.

## **CONCLUSION(S):**

Yes, pursuant to Article II, Section 9, of the Montana Constitution entitled **RIGHT TO KNOW**, no person shall be deprived of the right to observe deliberations of all public bodies. Pursuant to Section 2-3-201 MCA of Montana's open meeting laws, it is stated by the Montana State

Legislature that it is the State Legislature's intent that actions and deliberations of all public agencies shall be conducted openly.

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/s/

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Jim Nugent, City Attorney

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