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Legal Opinion 2021-012

TO: Mayor John Engen, City Counsel, Dale Bickell, Ginny Merriam, Marty Rehbein

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE July 22, 2021

RE: All meetings of public or governmental bodies, boards, commissions, agencies of government or other organizations or agencies supported in whole or part by public funds or expending public funds must be open to the public.

FACTS:

The city attorney's office has received an inquiry as to whether all bodies, boards, commissions, agencies, or organizations supported with public monies and/or expending public monies are subject to Montana's open meeting laws.

ISSUE(S):

Is a body, board, bureau, commission or agency of government as well as other organization or agency supported in whole or in part by public funds or expending public funds subject to Montana's open meeting laws?

CONCLUSION(S):

Yes. Pursuant to section 2-3-203 MCA, meetings of any body, board, bureau, commission or agency of government as well as any other organization or agency that is supported in whole or in part by public funds or that expends public funds must be open to the public.

LEGAL DISCUSSION:

Any government body, board, bureau, commission or agency of government or other organization or agency that is either (1) supported in whole or in part by public funds; or (2) expends public funds is subject to Montana's open meeting laws pursuant to subsections 2-3-203(1) & (2) MCA which states:

“2-3-203. MEETINGS OF PUBLIC AGENCIES AND CERTAIN ASSOCIATIONS OF PUBLIC AGENCIES TO BE OPEN TO PUBLIC-EXCEPTIONS. (1) All meetings of public or governmental bodies, boards,

bureaus, commissions, a agencies of the state or any political subdivision of the state or ORGANIZATIONS OR AGENCIES SUPPORTED IN WHOLE OR IN PART BY PUBLIC FUNDS OR EXPENDING PUBLIC FUNDS, INCLUDING THE SUPREME COURT, must be open to the public. (2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileged of any individual must be open to the public.” (emphasis added).

Both the Montana Supreme Court as well as the Montana Attorney General have stated that Montana’s open meeting laws must be liberally interpreted or liberally construed. See Associated Press v. Crofts, 2004 Mt 120, 321 M 193, 89 P 3d 971(2004) and 46 Montana Attorney General opinion 24(1996). The Montana Supreme Court in Associated Press v. Crofts, *supra*, identified a non-exhaustive list of several factors to be considered in determining whether a particular committee meeting must be open to the public that included factors such as (1) whether committee members are public employees acting in their official capacities; (2) whether the meetings are paid for with public funds; (3) whether the committee deliberates rather than simply gather facts and reports; (4) whether the deliberations concern matters of policy; (6) frequency of meetings; (6) whether committee members have executive authority; and (7) results of the meetings. Not every one of the identified factors must be present for a committee to be subject to Montana’s open meeting laws.

The Montana Attorney General has held that Montana’s open meeting laws apply to a local chamber of commerce receiving bed tax funds when acting as a nonprofit convention and visitor bureau; since the chamber had a responsibility of accounting to the public for the public funds received. 44 Montana Attorney General Opinion 40(1992). Also, the Montana Attorney General held that Montana’s open meeting laws applied to the Montana Life and Health Insurance Guaranty Association; since the entity was statutorily organized to protect insured members of the public from the extraordinary event of insurance company insolvency. 46 Montana Attorney General Opinion 24(1996).

Minutes of government and other entities subject to Montana’s open meeting laws must be open to public inspection. 37 Montana Attorney General Opinion 107 (1978).

CONCLUSION(S):

Yes. Pursuant to section 2-3-103 MCA, meetings of any body, board, bureau, commission or agency of government as well as any other organization or agency that is supported in whole or in part by public funds or that expends public funds must be open to the public.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:kf