

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2021-016

TO: Mayor John Engen, Dale Bickell, Eran Pehan, Mary McCrea, Dave DeGrandpre, Alex Edam, Cassandra Tripard, Kaitlin McCafferty, Jeremy Keene, Eric Anderson, Kevin Slovarp, Troy Monroe, Marty Rehbein, Leigh Griffing

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 20, 2021

RE: With respect to provision of municipal services upon annexation, Montana state law authorizes that the plan for provision of municipal services be met in first class cities when there is mutual agreement between the municipality and the property owners of the area to be annexed.

FACTS:

During recent staff discussions pertaining to proposed annexations, there was discussion about the city's commitment to provide municipal services upon annexation.

ISSUE(S):

Is it possible for first class cities to comply with a provision of municipal services plan upon annexation through mutual agreement with real property owners of the area being annexed.

CONCLUSION(S):

Yes, in first class cities the municipal commitment to provide municipal services upon annexation may be complied with by mutual agreement between the municipality and the real property owners in the area being annexed.

LEGAL DISCUSSION:

Several provisions of Montana municipal annexation law authorize first class cities to comply with a provision of municipal services plan through mutual agreement by the municipality and the real property owners of the area to be annexed.

For about 40 years, the City of Missoula has required owners of real property that is connecting to municipal sanitary sewer service; but not being immediately annexed, to sign a waiver of protest to annexation as well as a petition to annex applicable to the real property connecting to

municipal sanitary sewer service. Since the City of Missoula acquired the community water system four (4) years ago, the same requirements have been applied to real property owners connecting to Missoula Water, when their real property is located outside the city limits and is not being immediately annexed.

The city has for decades addressed the mutually agreed to provision of municipal services by the City of Missoula with language that is included in the property owner petition for annexation. For example the following petition to annex language has been included in the petitions to annex for several decades.

“Petitioner(s) hereby states that there is no need to prepare a Municipal Annexation Service Plan for this annexation pursuant to Section 7-2-4610, MCA since the parties are in agreement as to the provision of municipal services to the property to be annexed.”

Section 7-2-4610 MCA is entitled “PROVISION OF SERVICES”. Pursuant to subsection 7-2-4610(2) MCA there is a statutory exception to the requirement for a municipality to prepare an annexation municipal services plan

“(2) in first class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed”.

Pursuant to subsection 7-1-4111(1) every city having a population of 10,000 or more is a city of the first class.”

There are several other statutory provisions in Montana municipal annexation law that set forth statutory language basically identical or similar to the above quoted language in subsection 7-2-4610(2) MCA. For examples see:

- (1) “ADDITIONS TO MUNICIPALITIES”, subsection 7-2-4205 MCA;
- (2) “ANNEXATION OF CONTIGUOUS LAND”, subsection 7-2-4305(2) MCA;
- (3) “ANNEXATION OF CONTIGUOUS GOVERNMENT LAND”, section 7-2-4409, MCA;
- (4) “ANNEXATION OF WHOLLY SURROUNDED LAND”, subsection 7-2-4506 MCA;
- (5) “ANNEXATION BY PETITION”, 7-2-4610(2) MCA.

Pursuant to Montana law the municipality determines which statutory method of municipal annexation it will use for a specific municipal annexation.

CONCLUSION(S):

Yes, in first class cities the municipal commitment to provide municipal services upon annexation may be complied with by mutual agreement between the municipality and the real property owners in the area being annexed.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney

JN: kf