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Legal Opinion 2021-020

TO: Mayor John Engen, City Counsel, Dale Bickell, Marty Rehbein, Leigh Griffing, Angela Simonson

CC: Judge Kathleen Jenks, Tina Reinicke, Department Attorney

FROM: Jim Nugent, City Attorney

DATE November 1, 2021

RE: Montana Commission on Courts of Limited Jurisdiction shall issue a certificate finding elected Municipal Court Judges compliance with statutory qualifications prior to the Municipal Judge assuming office.

FACTS:

Four years ago with respect to the Missoula's municipal court judicial election, there was a legal residency eligibility question with respect to one of the two municipal court judicial candidates. The candidate for judge that was associated with the legal residency requirement did not win the election; so no additional legal review of the unsuccessful judicial candidate's qualifications was required. This legal opinion is to generally inform and remind other municipal elected officials and city staffs that the Montana Commission on Courts of Limited Jurisdiction reviews the qualifications of a municipal court judge to serve as judge and issues a certificate of completion of a course of education and training prescribed by the Commission prior to the judge assuming office as municipal court judge. This year, I am not aware of any factual circumstances that exist to generate any qualifications issues with respect to any of the six (6) municipal court judicial candidates; but wanted to remind city officials and staffs that technically there is a statutory qualification compliance review process that continues after the election for elected municipal court judges.

ISSUE(S):

Does the Montana Commission on Courts of Limited Jurisdiction have a review role with respect to municipal court judges prior to their assuming office?

CONCLUSION(S):

Yes, pursuant to Montana state law the Montana Commission on Courts of Limited Jurisdiction reviews the judicial qualification to determine that the elected judge meets the statutory qualifications to assume the position of municipal court judge.

LEGAL DISCUSSION:

Title 3, chapter 6, part 2 MCA is entitled “MUNICIPAL COURT JUDGES” and sets forth the primary Montana state laws applicable to the qualification, certification and training of municipal court judges prior to their being eligible to assume the office of elected municipal court judge.

Section 3-6-202 MCA is entitled QUALIFICATIONS—CERTIFICATION—TRAINING with respect to municipal court judges. Pursuant to section 3-6-202 MCA it is the statutory role of the Montana Commission on Courts of Limited Jurisdiction to review the qualifications of a person elected as municipal court judge to assume the office of municipal court judge.

The Montana Commission of Courts of Limited Jurisdiction reviews’ the elected municipal court judge’s statutory qualifications for factors such as compliance with minimum number of years admitted to the practice of law in Montana as well as compliance with residency and minimum judicial education requirements. Pursuant to section 3-1-1502 MCA once compliance is determined, the Commission issues a certificate of completion to the elected judge that must be filed with county clerk and recorder. The certificate of completion is a certificate of compliance that the elected judge meets the statutory qualifications for municipal court judge and has completed a course of education and training prescribed by the Commission.

Section 3-6-202 MCA states:

3-6-202. Qualifications -- certification -- training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 3 years prior to the date of appointment or election.

(2) A municipal court judge shall reside in the county in which the court is located and shall meet the residency requirements provided in **3-10-204**.

(3) The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in **3-1-1502**, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in **3-1-1502**.

(4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under **3-10-203** may fulfill the requirement provided for in this subsection.

(5) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).

(6) A municipal court judge is entitled to reimbursement by the city in which the judge holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section.

Section 3-1-1502 MCA that is cross refenced to within section 3-6-202 MCA states as follows:

3-1-1502. Training and certification of judges. Except as provided in **3-1-1503**, a judge selected for a term of office may not assume the functions of the office unless the judge has filed with the county clerk and recorder in the jurisdiction a certificate of completion of a course of education and training prescribed by the commission.

CONCLUSION(S):

Yes, pursuant to Montana state law, the Montana Commission on Courts of Limited Jurisdiction reviews the judicial qualifications to determine that the elected judge meets the statutory qualifications to assume the position of municipal court judge.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN: kf