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Legal Opinion 2022-011

TO: City Council, Mayor John Engen, Dale Bickell, Leigh Griffing, Ginny Merriam, Eric Hallstrom
CC: Department Attorney
FROM: Jim Nugent, City Attorney
DATE August 9, 2022
RE: MONTANA CONSTITUTION PROHIBITS MONTANA GOVERNMENTS FROM IMPOSING ANY TAX, INCLUDING A SALES TAX, ON THE SALE OR TRANSFER OF REAL PROPERTY.

FACTS:

Monday evening August 8, 2022 during the city council meeting a citizen suggested the adoption of a sales tax on some real property transfers.

ISSUE(S):

May the City of Missoula adopt a tax on the transfer of real property?

CONCLUSION(S):

Article VIII, Section 17 of the Montana Constitution prohibits Montana governments from imposing any tax, including a sales tax, on the transfer of real property.

LEGAL DISCUSSION:

November 2, 2010 Section 1 of Montana Constitutional Initiative No. 105 approved a prohibition on Montana governments imposing any tax, including a sales tax, on the sale or transfer of real property.

Article VIII, section 17 of the Montana Constitution states:

“Section 17. PROHIBITION ON REAL PROPERTY TRANSFER TAXES. The state or any local government unit MAY NOT IMPOSE ANY TAX, INCLUDING A SALES TAX, ON THE SALE OR TRANSFER OF REAL PROPERTY. (emphasis added).

CONCLUSION(S):

Article VIII, Section 17 of the Montana Constitution prohibits Montana governments from imposing any tax, including a sales tax, on the transfer of real property.

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/s/ Jim Nugent

Jim Nugent, City Attorney

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