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Legal Opinion 2022-014

TO: City Council, Department. Mayor's Office, Department City Clerk, Leigh Griffing, Angela Simonson

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 16, 2022

RE: STATUTORY PROCESS FOR FILLING VACANCIES IN MUNICIPAL ELECTED OFFICES IN MONTANA

FACTS:

This written legal opinion is intended to provide information pertaining to the filling of a vacancy in the office of mayor in the City of Missoula.

ISSUE(S):

What are some important statutory provisions to know with respect to the filling of a vacancy in a municipal elected office?

CONCLUSION(S):

A vacancy in a Montana municipal elected office must be open and subject to election at the next city general election for any unexpired term of office. In the interim the elected municipal office must be filled by a vote of a majority of the members of the city council within 30 days of the vacancy.

LEGAL DISCUSSION:

Pursuant to statutory Montana municipal government state laws; section 7-4-4112 MCA is entitled "FILLING OF VACANCY". Pursuant to section 7-4-4112 MCA if a vacancy occurs in any municipal elected office, the elected office is considered open and subject to election at the next general election; except the term of office is limited to the unexpired term of the person who originally created the vacancy in the municipal elected office.

In the interim, a majority of the members of the city council must appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

Section 1-1-306 MCA of Montana's general provisions of law is entitled "COMPUTATION OF TIME-WHICH DAYS COUNTED". Pursuant to section 1-1-306 MCA when time is calculated, the date of the occurrence is not included in the time period being calculated.

CONCLUSION(S):

A vacancy in a Montana municipal elected office must be open and subject to election at the next general city election for any unexpired term of office. In the interim the elected municipal office must be filled by a vote of a majority of the members of the city council within 30 days.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:dj