

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2023-001

TO: Mayor Jordan Hess, City Council, Dale Bickell, Department City Clerk, Eran Pehan, Montana James, Evora Glenn, Rick Henderson

CC: Department City Attorney

FROM: Jim Nugent, City Attorney

DATE: February 1st, 2023

RE: Interlocal agreements are contracts that must be authorized and approved by the governing body of the public agency.

FACTS:

City staff are proposing extension of the time period for an interlocal agreement between Bozeman, Missoula County and the City of Missoula.

ISSUE(S):

Pursuant to Montana state law who approves interlocal agreement contracts?

CONCLUSION(S):

Pursuant to Mont. Code Ann. § 7-11-104 of Montana's interlocal agreement contract law, the contract must be authorized and approved by the governing body.

LEGAL DISCUSSION:

Title 7, chapter 11, part 1 Mont. Code Ann. is entitled INTERLOCAL AGREEMENTS. Mont. Code Ann. § 7-11-104 of this part entitled AUTHORIZATION TO CREATE INTERLOCAL AGREEMENTS, identifies interlocal agreements as contracts.

This section of Mont. Code Ann. then goes on to state in pertinent part that:

“The contract must be authorized and approved by the governing body.”

Multiple Montana laws applicable to municipalities indicate that the municipal governing body is the legislative body. For examples see general municipal laws defining governing body as meaning “legislative body”; see (1) subsection 7-3-122 (4) Mont. Code Ann. of the statutory definitions applicable to alternative forms of local government (2) governing body means the legislative body established in the alternative form of a local government; subsection 7-1-4121(6) Mont. Code Ann.; (3) “Business Improvement District Act”, “governing body means the legislative body of a local government”, subsection 7-12-1103(5) Mont. Code Ann. (4) ;Local Government Budget Act for both counties and municipalities defines governing body as “the elected body responsible for the administration of a local government”; subsection 7-6-4002(1) Mont. Code Ann..

CONCLUSION(S):

Pursuant to Mont. Code Ann. § 7-11-104 of Montana’s local government agreement contract law, the contract must be authorized and approved by the governing body.

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A handwritten signature in black ink, reading "Jim Nugent", enclosed within a thin black rectangular border.

Jim Nugent, City Attorney

JN: mcs