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Legal Opinion 2023-003

TO: Mayor Jordan Hess, City Council, Department City Clerk, Leigh Griffing

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE March 10th, 2023

RE: Montana constitution requirement for city voters to vote every ten years on whether or not to study what form of statutory alternative form of government should be utilized for City of Missoula government.

FACTS:

January 9th, 2023, spokesperson Geoff Badenoch for the League of Women Voters provided public comment about the fact that the time is approaching next calendar year when Missoula city voters must determine whether or not to study the statutory alternative form of government that the City of Missoula may operate pursuant to. There also are currently at least three 2023 Montana State Legislative proposals that are in direct conflict with current provisions of the current City of Missoula self-governing charter. For example Montana State Legislative proposals include: (1) city elections be partisan instead of nonpartisan; (2) city elections be in even-number calendar years rather than current odd-numbered calendar years; (3) in first class (large) Montana municipalities there must only be one city council member in each ward, rather than two; (4) if the election calendar year is moved to even numbered calendar years the existing term of office for city elected officials would be required to be extended at least one year; which is not addressed in the current charter.

The Missoula City Council does have the local governing body power or authority to by referendum place amendments to the existing city charter on the ballot for city voters to consider and vote on.

Since the city voters must vote in 2024 to determine whether or not they desire to study the City of Missoula's statutory alternative form of local government; the purpose of this legal opinion is to provide a convenient source for city elected officials to readily reference some of Montana law requiring each local government unit voters to consider whether or not to study the statutory alternative form of local government that the City of Missoula should operate pursuant.

LEGAL DISCUSSION:

Montana Constitution, Article XI, section 9 entitled “VOTER REVIEW”; requires that every ten (10) years voters of each local government unit shall vote to determine by election vote whether a local government will undertake a study of its local government alternative form structure of government by electing a study commission to perform such a study review. If a study commission is created, the study commission may or may not recommend an alternative form of local government structure or recommend revisions to the existing local government structure.

Montana Constitution, Article XI, Section 9 (2) states:

“(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.”

Montana’s local government voter review laws are set forth in Mont. Code Ann. § 7-3-171 through 7-3-193, which is codified in a bit more than six (6) pages of text.

The statutory alternative structural forms of local government in Montana that may be considered for local government voter adoption are identified below by the title for their codified Mont. Code Ann. part include:

- (1) Commission-Executive Government (A/K/A City Council/Mayor) Government structure, operating pursuant to Mont. Code Ann. § 7-3-201 through 7-3-224; This is the current City of Missoula structural form of local government in combination with strong mayor self-government charter government adopted by City of Missoula voters and continued with some revision, such as non-partisan elections rather than partisan elections.
- (2) Commission-Manager Government operating pursuant to Mont. Code Ann. § 7-3-301 through 7-3-318;
- (3) Commission Government operating pursuant to Mont. Code Ann. § 7-3-401 through 7-3-442;
- (4) Commission-Presiding Officer Government, operating pursuant to Mont. Code Ann. § 7-3-501 through 7-3-517;
- (5) Town Meeting Government operating pursuant to Mont. Code Ann. § 7-3-601 through 7-3-613;
- (6) Charter Government operating pursuant to Mont. Code Ann. § 7-3-701 through 7-3-709. Montana Constitution Article XI, section 5 entitled “SELF-GOVERNMENT CHARTERS” requires the Montana State Legislature to provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with

the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body. Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

- (7) City-County Consolidation-Option-1, Mont. Code Ann. § 7-3-1101 through 7-3-1105;
- (8) City-County Consolidation-Option 2 operating pursuant to Mont. Code Ann. § 7-3-1201 through 7-3-1280 and continuing in Mont. Code Ann. § 7-3-1301 7-3-1348;
- (9) Strong Mayor Municipal Government, Mont. Code Ann. § 7-3-4101 and 7-3-4102;
- (10) Municipal Commission Government operating pursuant to Mont. Code Ann. § 7-3-4201 through 7-3-4267;
- (11) Municipal Commission-Manager Government operating pursuant to Mont. Code Ann. §7-3-4301 through 7-3-4374 continued in Mont. Code Ann. § 7-3-4401 through 7-3-4466.
- (12) Mont. Code Ann. § 7-3-173(1)(c) is the provision of Montana state law that provides that the question of conducting a local government review and establishing a study commission must be held if “(1) (c) 10 years have elapsed since the electors voted on the question of conducting a local government review and establishing a study commission” as required by the Montana Constitution.

Pursuant to Mont. Code Ann. § 7-3-174(1) the ballot issue vote on whether to conduct a local government unit study review must be conducted at a general primary election. Pursuant to Mont. Code Ann. § 7-3-175 pertaining to the “BALLOT FORM AND QUESTION”, the FOR and AGAINST ballot language must include both voting to establish and fund a study commission consisting of an identified number of study commission members of at least three (3) members to be elected. In addition, the ballot question must also specify the establishment of funding not to exceed a specific dollar amount or a specific mill amount.

Pursuant to Mont. Code Ann. §7-3-176 there is no primary election for election of study commission members. The study commission members must be registered electors (voters) of the local government unit conducting the study commission review. The persons desiring to serve on the study review commission apply for inclusion on the upcoming general election ballot and at the general election the study commission members are selected by voters without a primary election for their selection.

Mont. Code Ann. § 7-3-177 requires that there be an odd number of study commission members elected. Mont. Code Ann. § 7-3-177(2) provides:

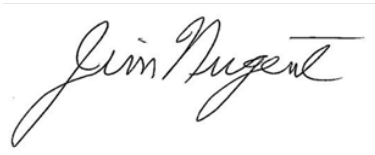
“(2) Every study commission shall include an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body. The ex officio member must be appointed prior to the organization of the study commission”

Pursuant to Mont. Code Ann. § 7-3-183, the powers of the study commission include the power to employ and fix the compensation and duties of necessary staff; contract and cooperate with other agencies, establish advisory boards and committees retain consultants and do any other act consistent with and reasonably required to perform its function. The local government being studied must provide office and meeting space as well as clerical assistance to the study commission. The study commission shall prepare a budget for each fiscal year and the local government must appropriate an amount necessary to fund the study. The local government is authorized to levy tax mills in excess of all other mill levies authorized by law.

Mont. Code Ann. § 7-3-185 is entitled “SCOPE OF STUDY COMMISSION RECOMMENDATIONS”.

Mont. Code Ann. § 7-3-186 is entitled “STUDY COMMISSION TIMETABLE” and among other statutory duties requires the study commission within 90 days of its organizational meeting establish and publish a timetable for its deliberations and actions.

OFFICE OF THE CITY ATTORNEY

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

Jim Nugent, City Attorney

JN: mcs