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Legal Opinion 2010-016

TO: John Engen, Mayor; City Council; Bruce Bender, Chief Administrative Officer; Brentt Ramharter, Finance Director; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk; Kelly Elam, Secretary

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE December 29, 2010

RE: Qualifications to be a City Council member

FACTS:

City Council member Roy Houseman is resigning his elected city council position in order to pursue fulltime employment that will take him out of state.

ISSUE:

What qualifications are required by Montana statute to serve as a city council member in municipal government?

CONCLUSION:

In order to be eligible to serve as a city council member an individual must be at least 18 years old and be a resident of the city council ward or land recently annexed into the ward for at least 60 days preceding the election or appointment. The individual must also be a citizen of both the United States and the state of Montana as well as a qualified elector registered to vote.

LEGAL DISCUSSION:

A multitude of separate provisions of the Montana Constitution and statutes establish the qualifications for an individual to serve as a city council member in municipal government.

Mont. Code Ann. § 7-4-4401 sets forth qualifications for a city council member.

7-4-4401. Qualifications for city council member. A person is not eligible for the office of city council member unless the person is a resident for at least 60 days preceding the election to office of the ward electing the person or of an area that has been annexed by the city or town and placed in the ward.
(Emphasis added.)

Mont. Code Ann. § 7-4-4104 sets forth the general qualifications for municipal office.

7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

- (1) who is not a citizen of the United States; and
- (2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town. (Emphasis added.)

Mont. Code Ann. § 2-16-102(2) pertains to general qualifications for office.

2-16-102. Qualifications generally -- age and citizenship.

...
(2) A person is not eligible to hold civil office in this state who at the time of election or appointment is not 18 years of age or older and a citizen of this state.
(Emphasis added.)

Montana's Constitution Art. IV § 2 defines *qualified elector*.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Montana municipal special improvement district law defines a *qualified elector* as "registered electors of the municipality." Mont. Code Ann. § 7-12-4243(1)(b).

Montana's Constitution Art IV § 4 provides in its entirety:

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Elector is defined in the general provisions of Montana's election laws as "an individual qualified to vote under state law." Mont. Code Ann. § 13-1-101(10). *Elector* is also defined in

the general provisions pertaining to municipal government as "a resident of the municipality qualified and registered to vote under state law." Mont. Code Ann. § 7-1-4121(3).

The City of Missoula Charter pertaining to eligibility provides:

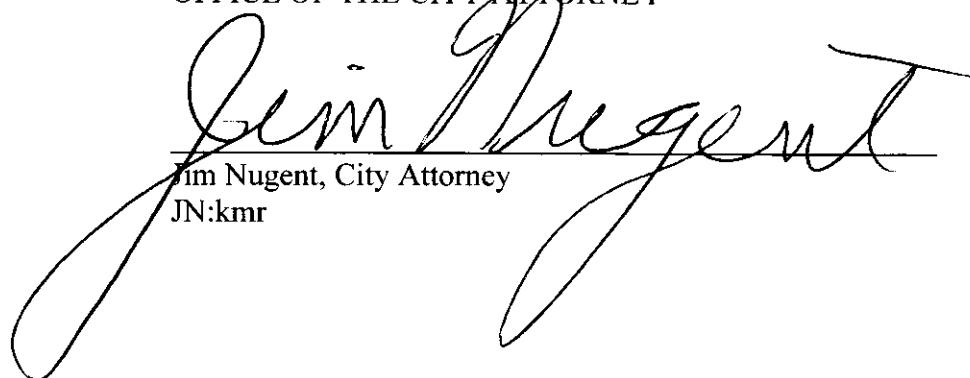
5. Eligibility. Only registered voters who are residents of the City shall be eligible to hold the office of City Council member. Both candidates for the office of City Council member, and City Council members must reside in the ward they represent.

City of Missoula Charter, Article II, § 5 (1/1/1997).

CONCLUSION:

In order to be eligible to serve as a city council member an individual must be at least 18 years old and be a resident of the city council ward or land recently annexed into the ward for at least 60 days preceding the election or appointment. The individual must also be a citizen of both the United States and the state of Montana as well as a qualified elector registered to vote.

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