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Legal Opinion 2011-021

TO: John Engen, Mayor; City Council; City Council Members Elect; Bruce Bender; Brentt Ramharter; Marty Rehbein; Gail Verlanic

CC: Dept. Atty

FROM: Jim Nugent, City Attorney

DATE November 10, 2011

RE: Municipal officials elected at municipal elections commence terms on the first Monday in January after election. Oaths of office must be filed with the county election administrator.

FACTS:

Seven individuals were elected to city council office pursuant to the Tuesday November 8, 2011 city municipal government elections. Newly elected municipal officials commence their terms on the first Monday of January. However, the first Monday in January, 2012 is January 2nd which is a legal holiday. Thus, oaths of office should be administered prior to January 2, 2012, but should be effective as of January 2, 2012.

ISSUES:

1. When do officers elected at a municipal election commence their term of office?
2. What important oath of office steps must occur prior to an elected officer performing any official duties?

CONCLUSIONS:

1. Pursuant to Mont. Code Ann. § 7-4-4107, the terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.
2. Prior to performing any official duties, newly elected municipal officials must take an oath of office which must be certified by the official before whom the oath was taken and then be filed with the county election administrator.

LEGAL DISCUSSION:

Title 7, Chapter 4, Part 41, Montana Code Annotated, is entitled *Municipal Officers in General*. Mont. Code Ann. § 7-4-4107 of this part provides in its entirety as follows.

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment. (Emphasis added).

Municipal elected officials must take an oath of office and have it filed with the county election administrator before the elected municipal officer may perform any official duties. 7-1-4137 MCA provides as follows.

7-1-4137. Oath of office. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator. (Emphasis added).

Article III, section 3 of the Montana Constitution, which is referenced in 7-1-4137 MCA, provides as follows.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust. (Emphasis added).

Also, with respect to municipal elected officials and oaths, it should be noted that 7-1-4136 MCA provides that "The chief executive and all elected municipal officers may administer oaths."

CONCLUSIONS:

1. Pursuant to Mont. Code Ann. § 7-4-4107, the terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.

2. Prior to performing any official duties, newly elected municipal officials must take an oath of office which must be certified by the official before whom the oath was taken and then be filed with the county election administrator.

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/s/

Jim Nugent, City Attorney

JN:mdg