



MISSOULA

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Legal Opinion 2008-006

TO: Mayor John Engen; City Council; Bruce Bender, Chief Administrative Officer; Anne Guest, Parking Commission Director; Brett Ramharter, Finance Director; Marty Rehbein, City Clerk; Nikki Rogers, Deputy City Clerk; Ellen Buchanan, MRA Director; Chris Behan, MRA; Rusty Wickman, Chief of Police; Mark Muir, Assistant Chief of Police; Steve King, Public Works Director; Kevin Slovarp, City Engineer

FROM: Jim Nugent, City Attorney

DATE May 7, 2008

RE: Missoula Parking Commission Membership

FACTS:

City Council members inquired about the membership of the Missoula Parking Commission at the April 21, 2008, COW meeting. The Missoula Parking Commission has five members.

ISSUES:

1. What are the qualifications pursuant to Montana statutes for serving as a member of the city parking commission?
2. May a city council member serve on the city parking commission?
3. What is the membership size allowed by statute for the city parking commission?
4. Who appoints city parking commission members?

CONCLUSIONS:

1. Pursuant to Mont. Code Ann. § 7-14-4609(1), a person shall be an elector of the city to qualify for appointment to the city parking commission. Pursuant to Mont. Code Ann. § 7-1-4121(3) an "Elector" means a resident of the municipality qualified and registered to vote under state law.

2. A city council member may serve as a city parking commission member. Montana statutes pertaining to city parking commissions do not prohibit a city council member from serving as a parking commission member.
3. Pursuant to Mont. Code Ann. § 7-14-4609 a city parking commission may consist of not less than five or more than seven members.
4. Pursuant to Mont. Code Ann. § 7-14-4609(1) the mayor, with the approval of the city council as legislative body, appoints members of the city parking commission.

LEGAL DISCUSSION:

City parking commission statutes are set forth in Montana Code Annotated Title 7, chapter 14, part 46, entitled *Parking Commissions*. Mont. Code Ann. § 7-14-4609 is entitled *Appointment of commission*. With respect to the qualifications necessary to serve as a city parking commission member, Mont. Code Ann. § 7-14-4609(1) provides in pertinent part “the mayor with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission.” (Emphasis added.) Pursuant to Mont. Code Ann. § 7-1-4121(3) an “Elector” means a resident of the municipality qualified and registered to vote under state law. Thus, in order to be qualified to serve as a parking commission member a person must be a resident of the city qualified to vote as well as registered to vote.

There is no statutory provision prohibiting a city council member from serving on the city parking commission. A city council member, as a resident city elector, may be appointed to the city parking commission.

As noted above, pursuant to Mont. Code Ann. § 7-14-4609 the size of the city parking commission is to be “not less than five or more than seven electors of the city.” Pursuant to Mont. Code Ann. § 7-14-4609(2) after creation of a city parking commission the size of the city parking commission may be changed “by subsequent resolutions of the legislative body of the city.”

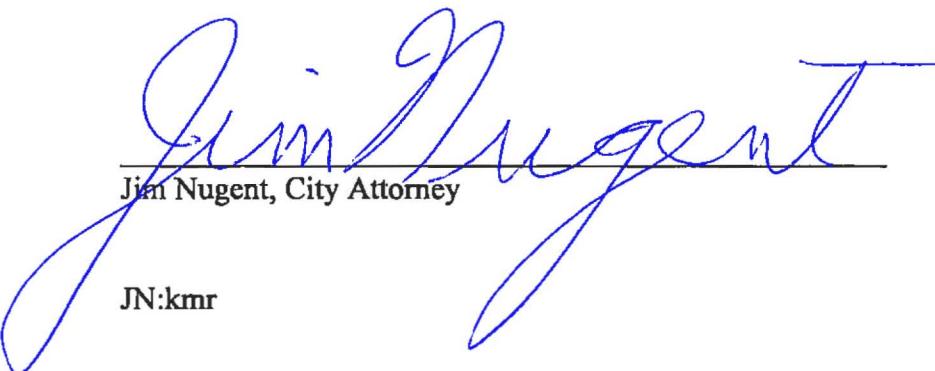
Also, as noted above, the mayor, with approval of the city council as legislative body, appoints members to the city parking commission.

CONCLUSIONS:

1. Pursuant to Mont. Code Ann. § 7-14-4609(1), a person shall be an elector of the city to qualify for appointment to the city parking commission. Pursuant to Mont. Code Ann. § 7-1-4121(3) an “Elector” means a resident of the municipality qualified and registered to vote under state law.
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JN:kmr