

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2013-010

TO: Mayor John Engen, Bruce Bender, Brentt Ramharter, Kevin Slovarp, Doug Harby, Gregg Wood, Don Verrue, Denise Alexander, Donna Gaukler, Kathy Mehring, Brian Hensel, Jack Stucky, Jessica Miller, Jason Diehl, Jeff Brandt, Mark Muir, Mike Brady, Chris Odlin, Mike Colyer, Scott Hoffman, Carl Horton, Gail Verlanic, Marty Rehbein, Wayne Gravatt, Scott Paasch, Starr Sullivan, Pat Brook

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE April 23, 2013

RE: Mayor as Chief Executive Officer of City of Missoula executes all documents on behalf of the City of Missoula.

FACTS:

It has arisen several times thus far this year that a city department or division has forwarded for review to our office a contract, a contract amendment, etc., to be reviewed and approved and there is no intent to have the mayor sign the document or apparently review the document. It is important that everyone realizes that the city administration must be involved in all contracts and contract amendments through Mayor John Engen, and/or Bruce Bender and often Brentt Ramharter, if there is a monetary impact involved. Also, since a new development services department has been recently created, it seemed important and appropriate to remind everyone that the Mayor as the City's Chief Executive Officer shall execute all documents on behalf of the City of Missoula.

ISSUE(S):

Pursuant to City of Missoula City Charter as well as pursuant to Montana municipal government operations law, who is to execute documents on behalf of the City of Missoula?

CONCLUSION(S):

The Mayor as the Chief Executive Officer of the City of Missoula is the individual who is to execute all documents on behalf of the City of Missoula.

LEGAL DISCUSSION:

The City of Missoula self-government charter adopted June 4, 1996 and effective January 1, 1997 sets forth ARTICLE III entitled “THE MAYOR”, which provides pursuant to ARTICLE III, section 4 as follows:

“4. DUTIES OF THE MAYOR. The Mayor shall execute all ordinances and resolutions passed by the City Council. The Mayor shall also execute all documents on behalf of the City following approval by the City Council.

This provision of the City of Missoula city charter is consistent with applicable provisions of Montana state law pertaining to municipal government operations in Montana.

Section 7-3-113 MCA sets forth an identification of provisions of title 7, chapter 3, part 2 MCA that pertain to a Montana municipal government self-government form of government that has a mayor/chief executive officer and a city council/city commission, unless the adopted city elector adopted charter has a provision that is different. Subsection 7-3-113(1)(c) MCA indicates that section 7-3-203 MCA is applicable to the City of Missoula’s form of self-government local government. Subsection 7-3-203(7) MCA provides:

“7-3-203. DUTIES OF EXECUTIVE. The executive shall:

....
(7) execute bonds, notes, contracts, and written obligations of the commission (council)subject to the approval of the commission (council)”

Subsection 7-1-4114(2) MCA pertaining to municipal executive officers states:

“7-1-4114. MUNICIPAL EXECUTIVE OFFICERS.

....
(2) The mayor is the chief executive officer of the city or town”.

Section 7-4-4303 MCA is entitled “POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, CITIZENS” . For purposes of this legal opinion it is important to be aware of subsection 7-4-4303(3) MCA which provides:

“7-4-4303. POWERS OF MAYOR RELATED TO MUNICIPAL OFFICERS, PERSONNEL, AND CITIZENS. The mayor has the power to:

....
(3) supervise the discharge of official duty by all subordinate officers;”

Subsection 2.02.010 (C) Missoula Municipal Code (MMC) states basically the same law as subsection 7-4-4303(3) MCA set forth above.

It also is important to note that pursuant to Montana state law it is the mayor that exercises the rights on behalf of the municipal city government to petition, protest or vote on behalf of the

municipal city government with respect to property owned by the municipal government. See section 7-1-4134 MCA entitled “RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION”. Section 7-1-4134 MCA provides as follows:

“7-1-4134. RIGHTS ON BEHALF OF GOVERNMENT OR CORPORATION. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

CONCLUSION(S):

The Mayor as the Chief Executive Officer of the City of Missoula is the individual who is to execute all documents on behalf of the City of Missoula.

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/s/

Jim Nugent, City Attorney

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