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Legal Opinion 2013-017

TO: Mayor John Engen, City Council, Bruce Bender, Mike Haynes, Melissa Gordon, Marty Rehbein, Nikki Rogers, Scott Paasch, Leigh Griffing

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE August 9, 2013

RE: Organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public at least as those meetings pertain to the receipt and expenditure of public monies.

FACTS:

The City Council is engaged in a review process to award some community development block grant (CDBG) monies to several nonprofit organizations or agencies. Citizen concern is being publically expressed to the City Council that one of the potential grant award recipients allegedly are not as compliant with Montana's public participation as they allegedly should be.

ISSUE(S):

If an organization or agency is awarded public monies pursuant to a grant award, does that organization have any public meeting responsibilities to comply with?

CONCLUSION(S):

Pursuant to Section 2-3-203, MCA, an organization or agency supported in whole or in part by public funds or expending public funds must be open to the public at least as those meetings pertain to the receipt and expenditure of public monies.

LEGAL DISCUSSION:

Title 2, Chapter 3, Part 2 MCA is entitled "Open Meetings". Title 2, Chapter 3 MCA pertains to public participation in governmental operations. However, the requirement for open meeting with public participation may also apply to organizations or agencies supported in whole or in part by public funds or expending public funds.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section. (emphasis added)

Montana Attorney General Marc Racicot when interpreting section 2-3-203, MCA with respect to an organization or agency receiving and expending public bed tax monies pursuant to 44 Attorney General Opinion No. 40(1992) held:

The meetings of a local chamber of commerce or other organization recognized and acting as a nonprofit convention and visitors bureau which receives and spends bed tax funds must as they pertain to the receipt and expenditure of bed tax monies, be open to the public in accordance with section 2-3-203, MCA. (emphasis added).

Montana Attorney General Racicot stated:

Section 2-3-203(1), MCA, provides:

All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

The question here is whether a local chamber of commerce ("chamber") which has been recognized as a CVB and receives bed tax funds in subject to this provision of the open meeting law. A chamber, as a CVB, is an organization supported, at least in part, a bed

tax monies which are public funds. Further, a chamber, as a CVB, decides how those public funds are spent. Under the plain language of the statute, it is my opinion that a local chamber of commerce, when acting as a CVB, is subject to the open meeting law.

This opinion is further supported by the intent and purpose of the open meeting law. The open meeting law is to be liberally construed and applies generally to agencies that “exist to aid in the conduct of the peoples’ business.” §2-3-201, MCA. The expenditure of public funds for the purpose of developing tourism in Montana is “the conduct of the peoples’ business, “whether conducted by a public or private nonprofit organization. As has been stated in a previous Attorney General’s Opinion, “The precise expenditure of public funds is simply not a private fact.”

Att’y Gen. No. 109 at 375, 377 (1980), quoting Penokie v. Michigan Technological University, 93 Mich. App. 650, 287 N.W.2d 304 (1980)....

....Further, by accepting public funds and deciding how those funds are to be spent, the CVB takes on the responsibility of accounting to the public for those funds.....

You have also asked to what extent a local chamber, when acting as a CVB, would be subject to the open meeting law. In such circumstances, the chamber would be bound by the same expectations as any other public or governmental body. Thus, a meeting held by the individual privacy of the chamber clearly exceed the merits of public disclosure. See Belth, 227 Mont. 341, 345, 740 P. 2d 638, 641-43 (1987). It must be emphasized, however, that the presumption lies with openness and disclosure, and a meeting is presumed open unless an exception exists as defined in Section 2-3-203, MCA.

CONCLUSION(S):

Pursuant to Section 2-3-203, MCA, an organization or agency supported in whole or in part by public funds or expending public funds must be open to the public at least as those meetings pertain to the receipt and expenditure of public monies.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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