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Legal Opinion 2013-022

TO: Mayor John Engen, City Council, Municipal Court Judge Kathleen Jenks, Bruce Bender, Tina Schmaus, Marty Rehbein, Nikki Rogers, and Kelly Elam

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE November 5, 2013

RE: Commencement of elected terms of office for newly elected City of Missoula Municipal Public Officials will be Monday, January 6, 2014.

FACTS:

City of Missoula municipal mail in or poll delivery ballot elections will conclude November 5, 2013. There will be at least four new city council members; because four current city council members are not seeking re-election. The City of Missoula election ballot includes four year term elections for mayor, six (6) city council seats and one municipal court judge.

ISSUE(S):

Pursuant to Montana state law when will the City of Missoula elected officials elected at the current city election for four year terms actually take office?

CONCLUSION(S):

Pursuant to Montana state law sections 7-4-4107 and 3-6-201 MCA the City of Missoula elected officials elected to four year terms of office at the municipal election concluding today will actually commence their respective four year terms of office on the first Monday of January 2014, which will be Monday January 6, 2014.

LEGAL DISCUSSION:

Section 7-4-4107 MCA pertaining to election of municipal officers generally and section 3-6-201 MCA pertaining to election of municipal court judges indicate that the term of office for the newly elected municipal officials commences on the first Monday in January after the election, which date will be January 6, 2014.

Section 7-4-4107 MCA provides 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)

Section 3-6-201 MCA provides in pertinent part to the City of Missoula as follows:

3-6-201. Number of judges -- election -- term of office -- chief judge -- duties of chief judge -- assistant judge. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge who is not a part-time assistant judge appointed under subsection (6) must be elected at the general election, as provided in 13-1-104(2). The judge's term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until a successor is elected and qualified.

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

(4) If there is more than one municipal court judge, the judges shall adopt a procedure by which they either select a chief municipal court judge at the beginning of each calendar year or by which the position of chief municipal court judge rotates among the judges in order of seniority at the beginning of each calendar year, with the most senior judge serving during the first year of the rotation.

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(6) A municipal court judge may, with the approval of the governing body of the city, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore under 3-6-204, to serve during the municipal court judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge. (emphasis added)

CONCLUSION(S):

Pursuant to Montana state law sections 7-4-4107 and 3-6-201 MCA the City of Missoula elected officials elected to four year terms of office at the municipal election concluding today will actually commence their respective four year terms of office on the first Monday of January 2014, which will be Monday January 6, 2014.

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/s/

Jim Nugent, City Attorney

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