

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2013-023

**TO:** City Clerk Staff

**CC:** Mayor's Office, City Council, City Department Heads, and Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** November 19, 2013

**RE:** Committees and Subcommittees of public entity meeting to conduct the people's business shall perform their actions and deliberations openly in public meetings.

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### **FACTS:**

A city clerk staff member has inquired concerning Montana state law requirements that City public entity committees and subcommittees conducting the people's business perform their actions and deliberations openly in public meetings.

### **ISSUE(S):**

Do committees and subcommittees of city public entity boards, commissions, committees etc. conducting the people's business by making recommendations, advice and/or taking actions and engaging in deliberations have to comply with Montana's public participation laws?

### **CONCLUSION(S):**

Yes, committees and subcommittees of city public entities boards, commissions, committees, etc. that are conducting the people's business by making recommendations, advice and/or taking actions engaging in deliberations are required by Montana state law to comply with Montana's open meeting/public participation laws.

## **LEGAL DISCUSSION:**

City of Missoula established public bodies, boards, commissions, authorities, committees, etc. are created for a clear public and governmental purpose to perform specific tasks on behalf of the public. Therefore, their respective meetings as well as the meetings of their committees or subcommittees must be conducted openly as public meetings.

Montana's Constitution article II, sections 8 through 10 pertaining to public right of participation, right of privacy provide as follows:

**Section 8. RIGHT OF PARTICIPATION.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law. (emphasis added)

Article II, section 8 entitled "RIGHT OF PARTICIPATION" of Montana's Constitution provides that government must provide the public its Constitutional right to a reasonable opportunity to participate in government operations prior to final decisions being made. This includes the recommendations, advice and/or decisions made by public entity public body committees and subcommittees.

**Section 9. RIGHT TO KNOW.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (emphasis added)

Article II, Section 9 of Montana's Constitution provides a constitutional right to observe deliberations.

Title 2, chapter 3, part 2 MCA is entitled "OPEN MEETINGS". Sections 2-3-201 through 2-3-203 MCA provide:

**2-3-201. Legislative intent -- liberal construction.** The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. (emphasis added)

**2-3-202. Meeting defined.** As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power. (emphasis added)

**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)

It is important to note that subsection 2-3-202 (6) MCA quoted above expressly provides that committees and subcommittees of public bodies for the purpose of conducting their business, must conduct their business pursuant to Montana's public open meeting laws. Also, see section 7-1-4141 MCA of Montana municipal state law that also requires that public entity committees conduct all their meetings open to the public.

Also, sections 7-1-4141 through section 7-1-4143 MCA of Montana state municipal law provide the following with respect to public meeting, public participation and establishment of rules affording citizens a reasonable opportunity for public participation.

**7-1-4141. Public meeting required.** (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203. (emphasis added)

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying. (emphasis added)

**7-1-4142. Public participation.** Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public. (emphasis added)

**7-1-4143. Participation.** In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision. (emphasis added)

It is important to note that section 7-1-4143 MCA of Montana's municipal statutes requires that any municipal public body, board, authority, committee "shall adopt rules for conducting the meeting affording citizens a reasonable opportunity to participate prior to final decisions being made."

**CONCLUSION(S):**

Yes, committees and subcommittees of city public entities boards, commissions, committees, etc. that are conducting the people's business by making recommendations, advice and/or taking actions engaging in deliberations are required by Montana state law to comply with Montana's open meeting/public participation laws.

OFFICE OF THE CITY ATTORNEY

/s/

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Jim Nugent, City Attorney

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