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Legal Opinion 2015-003

TO: Mayor John Engen; City Council; Bruce Bender; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Rob Scheben; Dale Bickell; City Clerk Department Staff

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE January 12, 2015

RE: Montana state law requires pawnbrokers to keep a register describing every article pawned or purchased which register must always be open to inspection and examination of any peace officer or other persons.

FACTS:

Missoula area pawnbrokers expressing concerns about electronic reporting of articles purchased or pawned at their pawnbroker business do not seem to be informing city elected officials that pursuant to Montana state law, pawnbrokers are required to keep a register describing every article pawned or purchased which pawnbroker register must always be open to inspection and examination of any peace officer or other persons. Thus, pursuant to Montana state law there is a statutory public right to inspect and examine the mandatorily kept register of every article pawned or purchased.

ISSUE:

Pursuant to Montana state law does the public have a right to inspect and examine the statutorily required pawnbroker register in which a pawnbroker is statutorily required to report every item pawned or purchased by the pawnbroker?

CONCLUSION:

Yes, pursuant to Montana state law section 31-1-402 MCA, every pawnbroker shall keep a register in which must be entered a description of every article pawned or purchased by the pawnbroker and the pawnbrokers register must always be open to inspection and examination by any peace officer or other person.

LEGAL DISCUSSION:

The public has a statutory right to inspect and examine the pawnbroker register that Montana state law requires pawn brokers to keep and enter a description of every article pawned or purchased by the pawnbroker. Obviously this statutory right exists in part to facilitate a victim of a theft to search for their stolen property. Section 31-1-402 MCA provides as follows:

“31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer shall keep a register, in which must be entered a description of every article pawned to or purchased by the pawnbroker or junk dealer, with:

- (a) the date of the pawning or purchasing;
- (b) date when the article must be redeemed;
- (c) the name of the person by whom the article was pawned or by whom purchased; and
- (d) the amount loaned on or paid for the article.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer shall enter upon the register:

- (a) the name of the purchaser;
- (b) the time of the sale; and
- (c) the price paid for the article.

(3) The register must always be open to inspection and examination of any peace officer or other persons. (emphasis added)

Clearly the Montana State Legislature has created a statutory right for persons other than law enforcement to inspect and examine the statutorily required pawnbroker register. Pursuant to subsection 31-1-402 (3) MCA the public has a statutory right to inspect and examine the required pawnbroker register. This statutory right obviously authorizes the victims and others assisting victims to search for their stolen property.

Montana state law authorizes a Montana municipality to license and regulate pawnbrokers. See for example sections 7-21-4201, 7-21-4207, and 7-21-4208 MCA which state as follows:

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate:

- (a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;
- (b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;
- (c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance. (emphasis added)

7-21-4207. Authority to require records for pawn, secondhand, and junk shops. The city or town council has power to require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them. The record and the articles purchased or pawned are subject to the inspection of all police officers of the city or town. (emphasis added)

7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops. The city or town council has power to prevent the keepers of pawn, secondhand, and junk shops from the purchasing of any article from a minor without the written consent of the parent or guardian of such minor. (emphasis added)

Subsection 45-5-623 (1)(d) MCA of Montana's Criminal Code entitled "Unlawful Transactions with Children" makes it a criminal offense for a person to knowingly as a junk dealer, pawnbroker or second hand dealer to receive or purchase a good from a child under the age of majority without authorization of the parent or guardian.

Montana state law pursuant to section 46-5-212, MCA recognizes an administrative warrant for utilization for implementing pawnbroker surrender of stolen property. Section 46-5-212 MCA provides:

46-5-212. Pawnbroker to surrender stolen property -- warrant. (1) When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days upon issuance of an administrative warrant by a peace officer. Following the expiration of the 30-day period, the pawnbroker or dealer shall surrender the property to the peace officer upon demand. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. During the 30-day period, the pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court or in municipal court.

(2) As used in this section, "administrative warrant" means a warrant:

- (a) issued by the administrative head, or the administrative head's designee, of the investigating agency of the jurisdiction;
- (b) that describes the property to be held; and
- (c) that states that the pawnbroker or dealer shall hold the property for 30 days from the date of receipt. (emphasis added)

CONCLUSION(S):

Yes, pursuant to Montana state law section 31-1-402 MCA, every pawnbroker shall keep a register in which must be entered a description of every article pawned or purchased by the pawnbroker and the pawnbrokers register must always be open to inspection and examination by any peace officer or other person.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:tfa