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Legal Opinion 2015-006

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

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE January 30, 2015

RE: Montana State Pawnbroker law authorizes peace officers to issue administrative warrants to pawnbrokers to hold or surrender stolen property.

FACTS:

Montana state pawnbroker law establishes a peace officer issued administrative warrant process for a peace officer requiring a pawnbroker to hold or surrender stolen property. Montana state pawnbroker law also provides that a pawnbroker who allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested that the pawnbroker hold the property commits the offense of theft.

ISSUE:

Does Montana state pawnbroker law authorize peace officers to issue administrative warrants to pawnbrokers requiring the pawnbroker to hold or surrender stolen property?

CONCLUSION:

Yes, Montana state pawnbroker law, section 46-5-212 authorizes a peace officer to issue an administrative warrant to a pawnbroker requiring the pawnbroker to hold or surrender stolen property.

LEGAL DISCUSSION:

Montana state law defines a “peace officer” pursuant to sections 45-2-101 (55), 46-1-202(17) and 1-1-207(2) MCA identically as meaning:

“Peace officer means ANY PERSON WHO BY VIRTUE OF THE PERSON’S OFFICE OR PUBLIC EMPLOYMENT IS VESTED BY LAW WITH A DUTY TO MAINTAIN

PUBLIC ORDER AND MAKE ARRESTS FOR OFFENSES WHILE ACTING WITHIN THE SCOPE OF THE PERSON'S AUTHORITY.” (emphasis added)

Pursuant to Montana state pawnbroker law, section 46-5-212 MCA a peace officer may issue an administrative warrant to a pawnbroker to hold or surrender 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.

Pursuant to Montana state pawnbroker law, section 45-6-314 MCA, if after a pawnbroker has been requested by a peace officer to hold stolen property pursuant to an administrative warrant, if the pawnbroker sells, barters or otherwise disposes of the, the pawnbroker commits the criminal offense of theft. Section 45-6-314 MCA entitled “THEFT BY DISPOSAL OF STOLEN PROPERTY” provides as follows:

45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested the pawnbroker or dealer to hold the property for 30 days, as provided in 46-5-212, commits the offense of theft as defined in 45-6-301.

CONCLUSION:

Yes, Montana state pawnbroker law, section 46-5-212 authorizes a peace officer to issue an administrative warrant to a pawnbroker requiring the pawnbroker to hold or surrender stolen property.

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/s/

Jim Nugent, City Attorney

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