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Legal Opinion 2015-007

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

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE January 30, 2015

RE: Montana Pawnbroker law requires that pawnbroker register be open to the inspection and examination of peace officers or other persons. Montana state law broadly defines the term person.

FACTS:

Montana state pawnbroker law specifically requires that the register that the pawnbroker is required to keep pursuant to Montana pawnbroker law must always be open to inspection and examination of any peace officer or other persons. A pawnbroker expressed concern to the city council public safety and health committee that our office interpreted “person” broadly. However, Montana state law defines the term “person” broadly in numerous state laws.

ISSUE:

Does Montana state pawnbroker law require that a pawnbroker always have available and open to peace officers and other persons a register to examine and inspect that Montana pawnbroker law requires a pawnbroker to keep?

CONCLUSION:

Yes. Pursuant to subsection 31-1-402(3) MCA of Montana pawnbroker law, the register that a pawnbroker is required to keep pursuant to Montana state pawnbroker law must always be open to inspection and examination of any peace officer or other person.

LEGAL DISCUSSION:

Section 31-1-402 MCA is entitled “PAWBROKER TO KEEP REGISTER”. Section 31-1-402 MCA states in its entirety 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)

Note that this Montana State pawnbroker law does not require recording of social security or driver's license numbers. Clearly Montana state pawnbroker law expressly authorizes any peace officer, as that term is defined in Montana state law to always be allowed to inspect and examine the register that the pawnbroker is required to keep pursuant to Montana state pawnbroker law. The term "peace officer" itself is much broader than a city police officer. There are several additional law enforcement agencies in Missoula that employ peace officers, such as the sheriff, university security, Montana highway patrol, federal law enforcement officers, etc., etc..

Pursuant to Sections 45-2-101(55), 46-1-202(17) and 1-1-207(2), MCA Montana state law defines a peace officer 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.

Montana state law defines the term "person(s) numerous times in Montana state law. The Montana statutory definitions of "person" are quite broad. Some examples of Montana state law statutory definitions of the term "person" that would be potentially relevant or related to credit transactions or local government include; but are not limited to:

(1) Title 31, chapter 1 MCA entitled "CREDIT TRANSACTIONS AND RELATIONSHIPS" and "CREDIT TRANSACTIONS" respectively, pursuant to subsection 31-1-202(1)(j) MCA defines "person" to mean " AN INDIVIDUAL, partnership, corporation, association, and any other group, however organized.". (emphasis added)

(2) Title 31, chapter 3, is entitled “RELATED CREDIT PRACTICES” and part 3 is entitled “CONSUMER REPORTING AGENCIES”. Pursuant to subsection 31-3-102(9) MCA the term “person” is defined as meaning “ANY INDIVIDUAL, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. “. (emphasis added)

(3) The Montana state Criminal Code statutory definition of the term “person” is set forth in subsection 45-2-101(57) MCA as defining “person” to mean “Person includes AN INDIVIDUAL, business association, partnership, corporation, government, or other legal entity AND AN INDIVIDUAL acting or purporting to act for or on behalf of a government or subdivision of government>” (emphasis added)

(4) Montana municipal general government statutes define the term “person” pursuant to subsection 7-1-4121(13) MCA as meaning “ANY INDIVIDUAL, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

Pursuant to the Montana rules of statutory construction (interpretation), section 1-2-107 MCA entitled “APPLICABILITY OF DEFINITIONS”, whenever a word is defined in the Montana Code Annotated, that same statutory definition is intended to be utilized to define the word or phrase wherever it appears; “except where a contrary intention plainly appears”, unless a contrary definition is given. Clearly, the Montana state legislature intends the term “person” to include any and all individuals. Pursuant to the Montana rules of statutory construction (interpretation) words utilized in laws must be given their plain meaning and no one may insert language into a statute that the Montana state legislature did not utilize in the law itself when adopting the Montana state law. See sections 1-2-101 and 1-2-106 MCA.

Clearly the plain meaning of Montana state law is that the term “person” includes any and all individuals. Further, pursuant to Montana state pawnbroker law subsection 31-1-402(3) MCA the register that Montana pawnbroker law requires a pawnbroker to keep “MUST ALWAYS BE OPEN TO INSPECTION AND EXAMINATION OF ANY PEACE OFFICER OR OTHER PERSONS.” (emphasis added)

CONCLUSION:

Yes. Pursuant to subsection 31-1-402(3) MCA of Montana pawnbroker law, the register that a pawnbroker is required to keep pursuant to Montana state pawnbroker law must always be open to inspection and examination of any peace officer or other person.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney
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