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Legal Opinion 2015-010

TO: Mayor John Engen; City Council; Bruce Bender; Dale Bickell; Steven Johnson; and City Clerk's Department

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE February 20, 2015

RE: A new city council member must have an oath of office on file with the County Election Administrator before being able to perform official City Council member duties.

FACTS:

Monday evening February 23, 2015 the Missoula City Council will be electing a replacement city council person to replace current city council member Caitlin Copple, who will soon be vacating her city council position.

ISSUE:

When the city council successfully votes to elect a replacement city council member, when is that newly elected city council member eligible to perform their official duties of being a city council member?

CONCLUSION:

Pursuant to section 7-1-4137 MCA a newly elected city council member is not eligible to perform their official duties as a city council member until their oath of office is filed with the Missoula County election administrator.

LEGAL DISCUSSION:

Municipal elected officials in Montana must take an oath of office prior to performing any official duties as a city council member. Further, that oath of office must be filed at the Missoula County election administrator's office before the city council member may perform any official duties as a city council member.

Article III, section 3 of Montana's Constitution sets forth the oath of office to be utilized in Montana for government officials who are required to take an oath of office prior to performing the official duties of their position. Article III, section 3 of Montana's Constitution states:

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Montana state law, section 7-1-4137 MCA requires municipal government officers to take an oath of office. Section 7-1-4137 MCA states as follows:

7-1-4137. Oath of office. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.

Pursuant to section 7-1-4137 MCA not only must a newly elected city council member take an oath of office; but that oath of office must be filed with the Missoula County election administrator before the newly elected city council member performs any official duties as a city council member.

CONCLUSION:

Pursuant to section 7-1-4137 MCA a newly elected city council member is not eligible to perform their official duties as a city council member until their oath of office is filed with the Missoula County election administrator.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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