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Legal Opinion 2015-014

TO: Mayor John Engen; City Council; Anne Guest; Bruce Bender; Dale Bickell; Leigh Griffing; Marty Rehbein; Jessica Miller; and Heidi Bakula

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE April 24, 2015

RE: Montana state law qualifications for eligibility to be appointed as a Parking Commission member.

FACTS:

The city parking commission may have two commission members who may not seek reappointment to the parking commission membership. The parking commission members requested City parking commission director Anne Guest to inquire on behalf of the parking commission members as to the eligibility qualifications for parking commission members as well as whether a city employee could be appointed to the parking commission.

ISSUE:

What are the Montana state law eligibility qualifications to be eligible for appointment to the city parking commission?

CONCLUSION:

Pursuant to section 7-14-4609 MCA the eligibility criteria for being appointed to a city parking commission are that the person appointed be a city elector. Pursuant to subsection 7-1-4121(3) MCA, a city elector means “a resident of the municipality qualified and registered to vote under state law.” There are no statutory provisions limiting a city employee from serving as a parking commission member.

LEGAL DISCUSSION:

Title 7, chapter 14, part 46 MCA is entitled “PARKING COMMISSIONS”. Section 7-14-4609 MCA is entitled “APPOINTMENT OF COMMISSION”. Section 7-14-4609 MCA provides:

7-14-4609. Appointment of commission. (1) Except as provided in subsection (3), when the legislative body of a city first adopts a resolution for a parking commission, the mayor, with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission. (2) Except as provided in subsection (3), the number of members of the commission, once established, may be changed within the number limits established in subsection (1) by subsequent resolutions of the legislative body of the city. A resolution to reduce the number of commission members may not require resignation of any member prior to completion of the member's appointed term. (3) The legislative body of a city may designate the board of trustees of a business improvement district appointed pursuant to 7-12-1121 as the parking commission if the area of the business improvement district is generally coterminous with the area designated in the resolution creating the parking commission as being subject to the jurisdiction and control of the parking commission. (emphasis added)

There are no statutory restrictions prohibiting a city employee from being appointed to be a member of the parking commission. City elected officials determine who is appointed to the parking commission pursuant to mayoral appointment that is subject to City Council approval.

Section 7-14-4610 MCA is entitled “TERM OF OFFICE”. Section 7-14-4610 MCA provides:

7-14-4610. Term of office. (1) Except as provided in subsection (3), three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there must be two additional appointments of 2 years and 3 years, respectively. (2) Except as provided in subsection (3), at the expiration of terms established in subsection (1), members must be appointed for a term of office of 4 years, except that all vacancies occurring during a term must be filled for the unexpired term. A member shall hold office until a qualified successor has been appointed. (3) If the board of trustees of a business improvement district has been appointed to serve as the parking commission, the term of office for a trustee serving as a commissioner must be the same as the trustee's term of office as a member of the business improvement district's board of trustees. (emphasis added).

Generally, pursuant to section 7-14-4610 MCA the terms of office for persons appointed to the city parking commission is four (4) years.

Title 7, chapter 1, part 41 MCA is entitled “MUNICIPALITIES”. Section 7-1-4121 MCA sets forth statutory definitions applicable to Montana municipalities. Subsection 7-1-4121(3) MCA defines an elector as meaning:

“(3) ‘Elector’ means a resident of the municipality qualified and registered to vote under state law.”

Thus, a person appointed to a city parking commission must be a city resident who is registered to vote in City elections.

CONCLUSION:

Pursuant to section 7-14-4609 MCA the eligibility criteria for being appointed to a city parking commission are that the person appointed be a city elector. Pursuant to subsection 7-1-4121(3) MCA, a city elector means “a resident of the municipality qualified and registered to vote under state law.” There are no statutory provisions limiting a city employee from serving as a parking commission member.

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/s/

Jim Nugent, City Attorney

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