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Legal Opinion 2015-018

TO: Mayor John Engen; City Council; City Clerk's Office Staff; Dale Bickell; Ginny Merriam; and Steve Johnson

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE July 7, 2015

RE: What constitutes a quorum pursuant to Montana municipal government law?

FACTS:

There was some concern as to whether or not the city council would have a quorum for its Monday evening July 6, 2015 regular meeting. At the time scheduled for the city council meeting there was a city council member quorum present for the meeting. This legal opinion is intended to inform everyone as to what constitutes a municipal city council quorum in Montana.

ISSUE:

Pursuant to Montana municipal government law what constitutes a quorum of a municipal city council?

CONCLUSION:

Pursuant to section 7-5-4121 MCA of Montana municipal government law, a majority of the members of the city council constitute a quorum of the city council membership.

LEGAL DISCUSSION:

Title 7, chapter 5, part 41 MCA is entitled "CONDUCT OF MUNICIPAL GOVERNMENT". Section 7-5-4121 MCA of title 7, chapter 6, part 41 MCA is entitled "CONDUCT OF COUNCIL BUSINESS", Section 7-5-4121 MCA provides as follows:

7-5-4121. Conduct of council business. (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe. (Emphasis added)

(2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be *viva voce*. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

Pursuant to subsection 7-5-4121(1) a quorum of a city council is a majority of the membership of the city council. This is consistent with generally recognized definitions of the term “quorum”. For example Black’s Law Dictionary, Eighth Edition at page 1284 defines the term “QUORUM” as meaning:

“QUORUM. PARLIAMENTARY LAW. The minimum number of members (a majority of all the members) who must be present for a deliberative assembly to legally transact business.”

CONCLUSION:

Pursuant to section 7-5-4121 MCA of Montana municipal government law, a majority of the members of the city council constitute a quorum of the city council membership.

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/s/

Jim Nugent, City Attorney

JN:tfa