

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2015-019

**TO:** City Council; Mayor John Engen; Dale Bickell; Steve Johnson; Marty Rehbein; Kirsten Hands; and Ginny Merriam

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** July 7, 2015

**RE:** 2015 computation of time period for City Council to adopt resolution requiring primary election after the close of filing by candidates for election during the 2015 municipal election.

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### **FACTS:**

During the 2015 municipal government elections for the City of Missoula there will be six (6) city council elections, one for each of the six (6) city council wards. The calendar year 2015 closing date for filing for city council election was July 2, 2015. Even if the election administrator informs Missoula city officials that a city primary election is not statutorily required pursuant to Montana's municipal nonpartisan election laws, the Missoula City Council could still require that a primary election be held. If the Missoula City Council desires to require a primary election be held for a local nonpartisan office(s) it must adopt a city council resolution not more than 10 days after the close of filing by candidates for election. There exist Montana statutory laws providing for the computation of time and which days are counted.

### **ISSUE:**

If the 2015 closing of filing for Montana municipal offices was July 2, 2015, what is the final day by which the Missoula City Council must adopt a city council resolution requiring a city primary election?

### **CONCLUSION:**

Pursuant to Montana state laws pertaining to the calculation of the computation of time and which days are counted, Monday July 13, 2015 is the last day when the Missoula City Council may adopt a city council resolution requiring a primary election be held.

## **LEGAL DISCUSSION:**

Title 13, chapter 14 MCA of Montana's election laws is entitled NONPARTISAN ELECTIONS. Pursuant to Article 1, section 4 of the current City of Missoula municipal government charter adopted by the Missoula city electorate, the election of the mayor and city council "shall be nonpartisan".

Section 13-14-115 MCA of title 13, chapter 14 MCA is entitled "Preparation and distribution of nonpartisan ballots-determination on conducting primary". Section 13-14-115 MCA provides:

**13-14-115. Preparation and distribution of nonpartisan primary ballots -- determination on conducting primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

- (i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and
- (ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a municipal primary election held pursuant to 13-1-107(2) must be held pursuant to subsection (2)(a) of this section for a local nonpartisan office, the election administrator shall conduct the election only for the local nonpartisan offices that have candidates filed in excess of two times the number to be elected to that office.

(c) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a) or (2)(b) for a local nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office.

(3) The governing body may require that a primary election be held for a local nonpartisan office if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office.

Pursuant to subsection 13-14-115(3) MCA a Montana municipal city council as the municipal governing body may require that a primary election be held for a local nonpartisan office(s) if the city council passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office(s). During calendar year 2015, the close of filing by candidates for municipal office was Thursday July 2, 2015.

In Montana there exist statutory provisions for computing time that must be reviewed in order to determine what is the final calendar date by which the Missoula City Council must adopt a resolution if the city council desires to require a primary election pursuant to subsection 13-14-115(3) MCA. Pursuant to those statutory times for computing time, Monday July 13, 2015 is the

deadline for the Missoula City Council to adopt a city council resolution requiring a primary election.

Section 1-1-306 MCA is entitled “Computation of time-which days counted”. Section 1-1-306 MCA provides:

**1-1-306. Computation of time-which days counted.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday and then it is also excluded. (emphasis added)

Section 1-1-216 MCA is entitled “Legal Holidays and Business Days”. Pursuant to subsection 1-1-216(1) MCA Sunday is considered a legal holiday in Montana; so Sunday July 12, 2015 is excluded from being included in the computation of time pursuant to subsection 13-14-115(3) MCA. Section 1-1-216 MCA provides as follows:

**1-1-216. Legal holidays and business days.** (1) The following are legal holidays in the state of Montana:

- (a) Each Sunday;
- (b) New Year's Day, January 1;
- (c) Martin Luther King Jr. Day, the third Monday in January;
- (d) Lincoln's and Washington's Birthdays, the third Monday in February;
- (e) Memorial Day, the last Monday in May;
- (f) Independence Day, July 4;
- (g) Labor Day, the first Monday in September;
- (h) Columbus Day, the second Monday in October;
- (i) Veterans' Day, November 11;
- (j) Thanksgiving Day, the fourth Thursday in November;
- (k) Christmas Day, December 25;
- (l) State general election day.

(2) (a) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Sunday, the Monday following is a holiday.

(b) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Saturday, the Friday preceding is a holiday.

(c) All other days are business days. (emphasis added)

Thus pursuant to the statutory computation of time provisions of section 1-1-306 MCA the Missoula City Council must adopt a resolution to require a primary election by Monday July 13, 2015, in order to be in compliance with the statutory time period set forth in subsection 13-14-115(3) MCA.

## **CONCLUSION:**

Pursuant to Montana state laws pertaining to the calculation of the computation of time and which days are counted, Monday July 13, 2015 is the last day when the Missoula City Council may adopt a city council resolution requiring a primary election be held.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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