OFFICE OF THE CITY ATTORNEY

Legal Opinion 2019-015

TO: Mayor Engen, City Council, Dale Bickell, Marty Rehbein, Kirsten Hands, Leigh Griffing, Steve Johnson, Scott Paasch, Ginny Merriam

FROM: Jim Nugent, City Attorney

CC: Department Attorney

DATE   June 19, 2019

RE: City council option to schedule municipal primary election must be determined within 10 days after the close of filing when number of candidates for municipal election do not meet certain statutory thresholds for requiring a municipal primary election.

FACTS:

After the Monday June 17, 2019 close of filing for municipal city council for 2019 municipal elections, city of Missoula officials have been informed by the Missoula County Election Administrator that in 2019 a Municipal primary election is not statutorily required to be held pursuant to Montana election law. When the election administrator makes a statutory determination that a primary election is not statutorily required it then becomes the governing body's (city council) decision as to whether to require a primary election.

ISSUE(S):

1. At the close of filing to file for elective municipal office in nonpartisan municipal elections, if a primary election is not statutorily required may the city council require a primary election?

2. How soon must the city council act after the closing deadline for filing for nonpartisan municipal elective office?

CONCLUSION(S):

1. If, statutorily, a primary election for a municipal election need not be held, the governing body (city council) has the option to require that a primary election be held.

2. The city council must act within ten (10) days after the closing of June 17, 2019 filing for elective office, if the city council desires a municipal primary election be held, they

must pass a resolution providing for a municipal primary election.

LEGAL DISCUSSION:

Title 13, MCA, is entitled "ELECTIONS". Title 13, Chapter 14, MCA, is entitled "NONPARTISAN ELECTIONS". Pursuant to the City of Missoula elector adopted City Charter, City municipal elections are nonpartisan elections. Title 13, Chapter 14, part 115, MCA, pertains to the preparation and distribution of nonpartisan primary ballots as well as the statutory threshold of candidates determination as to whether a primary election is automatically statutorily required for a nonpartisan primary election.

Subsection 13-14-115 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) Except as provided in subsection (2)(b), 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)   The election administrator may determine that a primary election for a nonpartisan county office need not be held if fewer than three candidates have filed for that office.
> (c)   If the election administrator determines that a primary election must be held pursuant to subsection (2)(a) or (2)(b), the election administrator shall conduct the primary election only for the nonpartisan offices that have a sufficient number of candidates that have filed to be elected to that office.
> (d)   If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), (2)(b), or (2)(c) for a 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 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.

Title 1, chapter 1, part 3, MCA, is entitled "RULES CONCERNING TIME". §1-1-306, entitled "COMPUTATION OF TIME – WHICH DAYS COUNTED" 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.

When calculating the 10 calendar days, June 17 is not counted. The 10th calendar day would be Thursday, June 27, 2019.

Pursuant to Montana law, when calculating a statutory time period, commence counting the day after the day that triggers the counting. If the final day of the statutory time period calculation ends on a Sunday, statutorily the next regular business day is calculated as the conclusion of the statutory time period.

CONCLUSION(S):

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