

**MINUTES
CITY OF LAUREL
CITY COUNCIL WORKSHOP
TUESDAY, MARCH 12, 2019**

A Council Workshop was held in the Council Chambers and called to order by Mayor Tom Nelson at 6:32 p.m. on March 12, 2019.

COUNCIL MEMBERS PRESENT:

☒ Emelie Eaton	☒ Heidi Sparks
☒ Bruce McGee	☒ Richard Herr
☒ Scot Stokes	☐ Irv Wilke
☒ Richard Klose	☒ Bill Mountsier

OTHERS PRESENT:

Matthew Lurker, Chief Administrative Officer
Kurt Markegard, Public Works Superintendent
Nick Altonaga, City Planner

Public Input:

There were none.

General Items

1. Reappointment of Evan Bruce to the Yellowstone Historic Preservation Board for a term ending December 31, 2020.

Mayor Nelson stated there were was some confusion on when Mr. Bruce's term ended. This is a reappointment to clarify that issue.

Executive Review

2. Resolution - A Resolution Of The City Council Authorizing The Developer Of Iron Horse Station Subdivision To Install A Stormwater Pond Within Dedicated Parkland Within The Subdivision Pursuant To LMC 16.40.040.

This request has been reviewed by Park Board. The Park Board has recommended allowing dedicated parkland for the stormwater facility which is allowable under LMC. The drainage pond must be an amenity to the park. An aerial map of the area was handed out to Council, see attached. There will be an issue with stormwater towards the west end of the project. Placing a drainage pond is a logical solution. This request is for permission to move forward with design work. Council would still need to approve the final design. Water levels are expected to be approximately 2 to 3 feet in total depth during a rain event.

It was questioned if this would need to go out for bid. It was clarified that no, the developer would be responsible for this project.

3. Resolution - Resolution Selecting _____ For The City Of Laurel's (2018-2019) Pavement Maintenance Project And Authorizing The Mayor To Sign A Contract For Completion Of The Project Same project that was bid last year. The contractor did not want to honor the bid and wanted to do work until this spring.

This is a rebid of the project Council approved last fall where the contractor did not want to honor the bid. Hardrives was the lowest bidder. The Engineer's estimate was \$161,367.00, and Hardrives came in with a bid of \$137,698.00. Hardrives bid is approximately \$8,000 above the bid received in the fall. The next bid was \$158,406.00. The contractor will begin the work as soon as weather permits. Chip and crack sealing can be done first then pavement maintenance as the weather improves.

4. Resolution - A Resolution Of The City Council Approving A Three-Year Agreement Between The City Of Laurel And Local Union Local 303, American Federation Of State, County And Municipal Employees, AFSCME.

Mayor Nelson stated that the CAO and the City Attorney had spent time getting this contract negotiated. The City was able to provide educational opportunities for those involved in the negotiation team.

The CAO stated that the changes made were focused on work/life balance, such as the way vacation is done, more vacation opportunities, etc. Officers currently purchase their own equipment. There has been an increase in the equipment allotment. He brought changes in section nine to Council's attention. There was an increase in health insurance to the same as other City employees. There was also a 2% pay increase.

Jessica McCartney, Dispatcher and 303 Union President, was present to answer any of Council's questions.

5. Ordinance - An Ordinance Amending Title 2, Chapters 2.08, 2.12, And 2.60 Of The Laurel Municipal Code For The Purpose Of Clarifying That Current City Employees Are Not Eligible To Serve As Members Of City Committees And Commissions Or To Serve As Elected City Officers In Accordance With Montana Law.

Council was provided with supporting documents, see attached. This amendment stemmed from last year's election issues. There were questions if people knew this information. It was requested that this amendment move forward.

It was questioned if volunteers are considered employees. It was clarified that yes, volunteers are employees. It was further clarified that one could not have oversight over themselves. That a volunteer police officer would be ineligible to run for Mayor as the Mayor has ultimate oversight. But it was questioned if that would also pertain to a Council Member.

Mayor Nelson stated that he would get clarification and have the City Attorney present at next weeks meeting.

Council Issues

It was questioned if the park in the Elena Subdivision has a drainage pond. It was further questioned if the Council had given permission for that drainage pond. Mayor Nelson stated that he was unsure and would follow up.

Public Works Committee will meet on March 18th at 6 pm in the Council Conference Room. Council was reminded if there were any agenda items to get them to the Chair or Public Works Director.

Other Items

There were none.

Review of Draft Council Agendas

6. Draft City Council Agenda for March 19, 2019.

Mayor Nelson brought it to Council attention that there has been no committee looking at dry scaping in the boulevards. The Council has not given an answer to the gentleman with rocks in his boulevard. Council will need to make a decision on the request as there have been no changes to the ordinance.

Mayor Nelson also stated that there is work being done on enforceable ordinances. Those will be coming forward soon.

Attendance at Upcoming Council Meeting

Council Member Sparks will be unable to attend.

Announcements

7. Employee and Volunteer Recognition

Mayor thanked employees and volunteers for their years of service.

Jessica McCartney, 303 Union President, invited Council to the spaghetti dinner for a Dispatcher. This Dispatcher has cancer and has been out for a while and will continue to be out. The spaghetti dinner is scheduled March 30th from 3pm to 6 pm at St. Anthony Parish Hall. There will also be a silent auction. Those interested in purchasing tickets can do so by contacting Jessica. A flyer with all information will be placed in all Council Member's boxes.

The council workshop adjourned at 7:02 p.m.

Respectfully submitted,



Brittney Moorman
Administrative Assistant

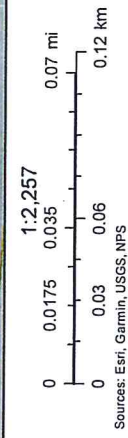
NOTE: This meeting is open to the public. This meeting is for information and discussion of the Council for the listed workshop agenda items.

Yellowstone County



March 12, 2019

- | | | | | | |
|--|------------------------|----------------------|--------------------|--|----------------|
| | Boundary | Federal/State Hwy | Local/Private | | Undeveloped Rd |
| | Federal/State/Arterial | County Rd, Collector | Local Street or Rd | | Private Rd |
| | Interstate | Principal Arterial | Ramp | | BARRIERS |



Yellowstone County

ATTORNEY GENERAL

STATE OF MONTANA

Tim Fox
Attorney General



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May 4, 2018

Brian J. West
City Attorney
Town of Stevensville
P.O. Box 30
Stevensville, MT 59870

Re: Request for guidance – doctrine of incompatible offices

Dear Mr. West:

On behalf of the Town of Stevensville, you have requested “legal guidance” under facts which indicate the “doctrine of incompatible offices.” Because your question is answered in cases and Attorney General Opinions that your research revealed, as well as others, we provide a letter of advice. This is not a formal Attorney General Opinion and should not be presented as such.

As explained in *Klick v. Wittmer*, 50 Mont. 22, 24-25, 144 P. 648, 649-50 (Mont. 1914) (which you cite), offices are incompatible when one has power of removal of the other, when one is in any way subordinate to the other, when one has power of supervision over the other, or when the nature of the duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both.

In this situation, the recently elected Mayor of Stevensville was at the time of election also a fireman in the town’s volunteer fire department. Under Title 7 of the Montana Code Annotated – Local Government – the mayor exercises appointment authority for the fire chief, assistant chief and all firefighters. Mont. Code Ann. §7-33-4106, cited in your request. The mayor may also suspend the chief, assistant chief or any firefighter for neglect of duty. *Id.* at § 4122. The hearing procedure after suspension is detailed in Mont. Code Ann. §7-33-4124. After hearing, the firefighter may be removed. *Id.* at § 4124(4).

The request points out that the mayor has no statutory authority to *remove* a firefighter, but the mayor may certainly suspend a firefighter and initiate the removal process. Under *Klick* and the statutes, the mayor arguably has “power of removal” over firefighters by initiating the process with a suspension. As such, firefighters are subordinate to the mayor. The doctrine explained in

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division * Division of Criminal Investigation * Highway Patrol Division * Forensic Science Division
Gambling Control Division * Motor Vehicle Division * Information Technology Services Division * Central Services Division

Brian West
May 4, 2018
Page 2

Klick is still recognized. See *Zunski v. Frenchtown Rural Fire Dep't Bd. of Trs.*, 2013 MT 258 ¶¶ 20-21.

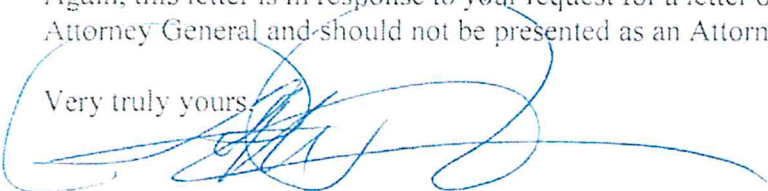
As stated in 43 Op. Att'y Gen. No. 47 (1989), "the operation of the doctrine of incompatible offices is quite simple. Acceptance of a second public office incompatible with a current public position operates as an implied resignation from the latter position." *Id.* at 165, citing *Klick*. The facts of that AGO involved one person being a board member of both a volunteer fire department and a fire service area board. The two entities were separate government entities, and one was not dependent upon the other for creation or continued existence. In 27 Op. Att'y Gen. No. 81 (1958), one person being both a deputy school superintendent and a deputy probation officer did not violate the doctrine, since one did not control the other. "Plainly the deputy probation officer has no authority or power to supervise the deputy superintendent of schools or appoint or remove her from office or vice versa." *Id.* at 177.

However, 46 Op. Att'y Gen. No. 26 (1996) determined that one person cannot be both a county commissioner and the county coordinator of disaster and emergency services, since "the commissioners have the power of supervision, revision, and removal over the position of DES coordinator." *Id.* at 2. The Missoula City Attorney also relies on *Klick* in this regard. See Legal Opinion 2011-001, attached, which determined that a city employee may not also serve as a city council member. These last two opinions are most analogous to the situation that you have described in Stevensville.

Under these authorities, because the mayor has appointment and suspension control over firefighters, the doctrine of incompatible offices as explained in *Klick* applies, preventing the recently elected mayor from maintaining his position as a firefighter in Stevensville's volunteer fire department.

Again, this letter is in response to your request for a letter of advice, is not a formal Opinion of the Attorney General and should not be presented as an Attorney General Opinion.

Very truly yours,



PATRICK M. RISKEN

encl.

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2011-001

TO: John Engen, Mayor; City Council; Bruce Bender, Chief Administrative Officer;
Brentt Ramharter, Finance Director; Dept. City Clerk; Dept. Human Resources

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE: January 7, 2011

RE: A city employee may not simultaneously serve as a city council member
pursuant to the legal doctrine of incompatible offices

FACTS:

Ward 2 currently has a vacant city council position after the resignation of Roy Houseman. Reportedly, a city employee has expressed interest in appointment to fill the vacant position.

ISSUE:

May a city employee simultaneously serve as a city council member?

CONCLUSION:

No. pursuant to the legal doctrine of incompatible offices, a city employee may not simultaneously serve as a city council member.

LEGAL DISCUSSION:

The Montana Attorney General held a city public works employee or director cannot be a member of the city council. 47 Op. Att'y Gen. 19 (1998). Pursuant to Mont. Code Ann. § 2-15-501(7) "the attorney general's opinion is controlling unless overruled by a state district court or the supreme court."

In his 1998 opinion, Attorney General Joe Mazurek stated in pertinent part:

As noted in Mr. Burns' letter, the question of whether a city employee sitting on the city council presents a conflict of interest was previously addressed in 41 Op. Att'y Gen. No. 81 (1986). In that opinion, former Attorney General Mike Greely held that there is no inherent conflict of interest when an employee of the City of Glendive is also an elected member of the city council. That opinion provides the controlling answer to Mr. Burns' initial question regarding a possible conflict of interest.

However, adoption of a conflict-of-interest statute in no way abrogates the common law rule against the holding of incompatible positions. Tarpo v. Bowman Pub. Sch. Dist. No. 1, 232 N.W.2d 67, 71 (N.D. 1975). Because I conclude that the doctrine of incompatible offices prevents a public works employee or director from serving as a city council member, as well as a hospital employee from serving as a trustee of the hospital district, it is not necessary to further analyze the conflict of interest issue.

The Montana Supreme Court has recognized that two offices are incompatible when one has the power of removal over the other, when one is in any way subordinate to the other, when one has the power of supervision over the other, or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both. State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914).

The doctrine of incompatible public offices eliminates the public policy concerns inherent in the simultaneous holding of multiple public offices or positions by:

(1) preventing multiple position-holding, so that offices and positions of public trust do not accumulate in a single person; (2) preventing individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their dual position-holding; (3) avoiding the inherent conflict which occurs when an employee's elected position has revisory power over the employee's superior in another position; and (4) ensuring, generally, that public officeholders and public employees discharge their duties with undivided loyalty.

46 Op. Att'y Gen. No. 26 (1996), citing 43 Op. Att'y Gen. No. 47 at 165 (1989), which cites Acevedo v. City of North Pole, 672 P.2d 130, 134 (Alaska 1983).

In 46 Op. Att'y Gen. No. 26, I also concluded that the common law doctrine of incompatible public offices applies to public employees, as well as to public office holders, and that a county employee appointed by a board of county commissioners and paid by the county cannot serve on the board of commissioners for the same county.

The common-law doctrine of incompatibility extends to positions of public employment as well as public offices. See, e.g., Otradovec v. City of Green Bay, 347 N.W.2d 614 (Wis. Ct. App. 1984). As the Wyoming Supreme Court has stated, it is "inimical to the public interest for one in public employment to be both the employer and the employee or the supervisor and the supervised." Thomas v. Dremmel, 868 P.2d 263, 264 (Wyo. 1994), quoting Haskins v. State ex rel. Harrington, 516 P.2d 1171 (Wyo. 1973).

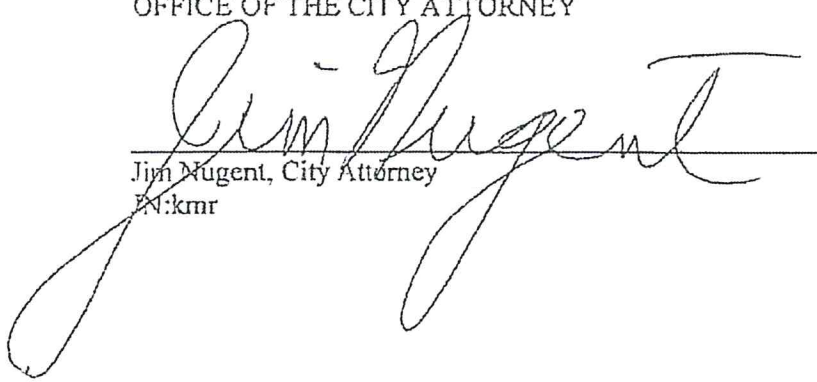
46 Op. Att'y Gen. No. 26.

47 Op. Att'y Gen. 19 (1998) (copy attached).

CONCLUSION:

No, pursuant to the legal doctrine of incompatible offices, a city employee may not simultaneously serve as a city council member.

OFFICE OF THE CITY ATTORNEY



Jim Nugent, City Attorney
JN:kmr