

May 12, 2015

Mr. Brian J. West
Stevensville City Attorney
P.O. Box 30
Stevensville, MT 59870-0030

Re: Applicability of State Leave Policies for Appointed City Judges

Dear Mr. West:

Attorney General Tim Fox asked that I review your request for an opinion regarding whether appointed judicial officers in courts of limited jurisdiction are exempt from the leave provisions of Mont. Code Ann. § 2-18-part 6. Because this question is clearly controlled by a previously-issued Attorney General Opinion, I have determined that a letter of advice rather than a formal Attorney General's Opinion is appropriate.

Montana's state leave policies apply to "any person employed by an agency except elected state, county, and city officials." Mont. Code Ann. § 2-18-601(6). An "agency" includes any "legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state." Mont. Code Ann. § 2-18-601(1)(a).

Attorney General Mazurek previously interpreted these provisions and held that the Chief Water Judge was not subject to state leave policies. 48 Op. Atty. Gen. Mont. No. 2 at *7 (April 27, 1999). The Attorney General reasoned that the terms included within the statutory definition of "agency" "more aptly describe the executive branch of government, not the judiciary." *Id.* at *2. Based on both statutory and constitutional principles, the Attorney General determined the judiciary did not constitute an "agency" for purposes of the state leave policies." *Id.* at *3-4.

In reaching this determination, the Attorney General did not focus on the distinction between appointed judges and elected judges, but rather on the judiciary's status as an independent branch of government. The Attorney General reasoned that if the state leave policies applied to judges, then "the legislative branch has effectively dictated work hours of the judiciary and placed supervisory control of those hours in the hands of the

Mr. Brian J. West
May 12, 2015
Page 2

executive branch.” *Id.* at *4. To avoid an unconstitutional interpretation, the Attorney General interpreted the phrase “‘employed by an agency’ . . . to exclude judicial officers, whether elected or appointed.” *Id.* at *7.

Under the prior Opinion, the resolution of your request does not hinge on whether a city judge is appointed or elected, but on whether a city judge is a member of the judiciary. A plain reading of the statutes relating to city judges establishes that city judges are members of the judiciary. For example, Montana law provides that “the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town” are “courts of justice of this state.” Mont. Code Ann. § 3-1-101(6). Further, the Judiciary Title devotes an entire chapter to city courts, city judges, and city court procedure. Mont. Code Ann. Title 3, chapter 11. In sum, city judges are judicial officers.

You provided a Department of Labor and Industry (DLI) determination relating to a former Stevensville City Judge. DLI distinguished the 1999 Attorney General Opinion by reasoning that the city judge was a city employee not a judicial branch employee and by further distinguishing between courts of limited jurisdiction and courts of general jurisdiction.

Attorney General Mazurek’s Opinion focused on the Chief Water Judge’s status as a member of the judiciary, not on the judge’s employer or jurisdiction. Regardless of whether a city judge receives a paycheck from a city or has limited jurisdiction, the judge is still a member of the judiciary. Thus, because city judges are judicial officers, they are exempt from the leave provisions of Mont. Code Ann. § 2-18-part 6. 48 Op. Atty. Gen. Mont. No. 2 at *7.

This letter is a letter of advice and not a formal Opinion of the Attorney General. I hope you find this letter helpful.

Sincerely,

MATTHEW T. COCHENOUR
Assistant Attorney General

mtc/jym