

## 46 Op. Att'y Gen. No. 21

CITIES AND TOWNS - Power of mayor to designate assistant police chief without approval of city council;  
POLICE DEPARTMENTS - Authority of mayor to supervise;  
POLICE DEPARTMENTS - Procedure for appointment of assistant police chief in council-mayor municipal government;  
MONTANA CODE ANNOTATED - Sections 7-3-213(3), 7-32-4103, -4104;  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 45 (1986).

HELD:

In a council-mayor form of government, the mayor, in the exercise of his statutory authority to manage and supervise the municipal police force and absent an ordinance to the contrary, may designate an officer to serve as assistant police chief without prior approval of the municipal council.

July 3, 1996

Mr. Andrew P. Suenram  
Dillon City Attorney  
P.O. Box 1366  
Dillon, MT 59725

Dear Mr. Suenram:

You have requested my opinion on the following question:

In a municipal council-mayor local government, does the mayor have the authority, in the absence of an ordinance denying him the power, to appoint an assistant police chief without the prior approval of the municipal council?

Dillon is a city with general government powers which has adopted the municipal council-mayor form of municipal government. Your letter informs me that the mayor has accepted the recommendation of the chief of police that an assistant chief be appointed, and has made an appointment from within the department. Members of the council have asked for your opinion as to whether council approval of the appointment is required, and having received your opinion, have asked you to forward the inquiry to me.

Your letter also informs me that the council has adopted an ordinance, Dillon Municipal Code § 2.52.070, pursuant to the power recognized in Mont. Code Ann. § 7-32-4104, requiring council approval for new appointments to the city police force. You state that the ordinance makes no reference to council approval for internal promotions and rank assignments once an officer is initially appointed.

Your letter and accompanying memorandum suggest that the mayor has the sole power of appointment under Mont. Code Ann. §§ 7-3-213(3) and 7-32-4103. The former section empowers the mayor to "appoint" and remove "department heads" with the consent of a majority of the council and to "appoint . . . all other employees of the local government." The latter section gives the mayor "charge and supervision" over the police department, authorizes the mayor to "appoint" all officers of the department, and authorizes the mayor to "make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force."

Your letter appears to recognize that the municipal council in a council-mayor form of government has the power under Mont. Code Ann. § 7-32-4104 to legislate in this area by adopting an ordinance that would establish a procedure for selection of subordinate officers within the police department subject to council approval. Your question arises in a context in which the council has chosen not to adopt such an ordinance. Thus, the answer to your question is governed by the statutes that set out the mayor's management authority over the executive function and the council's role, if any, in the exercise of that power.

In 41 Op. Att'y Gen. No. 45 (1986), Attorney General Greely interpreted the laws dealing with the mayor's appointing power in a council-mayor government structure. The question presented was whether the mayor could appoint an administrative assistant without the approval of the council. General Greely opined that generally when the legislature intended to require council approval of a mayoral appointment it said so explicitly. 41 Op. Att'y Gen. at 190. Since the statutes did not require council approval for the appointment of the employee at issue, General Greely held that the mayor could make the appointment without council approval.

Similar reasoning should be applied to the mayor's supervisory authority over the police force. The statutes generally leave the administrative management of the municipality's affairs to the mayor absent some affirmative action by the council that creates a council role in a particular decision. In the absence of some statutory requirement that a particular mayoral decision be subject to council approval, the presumption should be that the mayor can make the decision without first submitting it to the council.

In this case, I find the mayor's power to designate a particular officer within the police force to perform certain duties associated with the status as "assistant chief" to be within the mayor's power to have "charge and supervision" over the police department. Mont. Code Ann. § 7-32-4103. See Larkin v. City of Butte, 52 Mont. 410, 413, 158 P. 316, 317 (1916). That power is, in my opinion, sufficient to allow the mayor to make decisions about the internal management structure of the police force, such as determining whether to appoint an assistant chief, and if such appointment is to be made, who should fill the position, and determining the duties to be assigned to the position.

Your letter suggests that the mayor's power of appointment allows him to make this designation. In light of the conclusion expressed above, that is a question I need not reach. Whether the designation of a particular rank for a specific officer within the police department constitutes an "appointment" for purposes of the statutes allowing the mayor to "appoint" municipal employees generally, Mont. Code Ann. § 7-3-213(3), or police officers specifically, Mont. Code Ann. § 7-32-4103, is far from clear. The cases and opinions of this office dealing with the "appointment" power generally involve the initial hiring of an officer. See, e.g., State ex rel. Wynne v. Quinn, 40 Mont. 472, 475, 107 P. 506, 508 (1909) (hiring of chief of police); 41 Op. Att'y Gen. No. 45 (1986) (power to hire administrative assistant). I have found no authority in Montana construing the term "appoint" in statutes similar to the ones involved here to apply to the internal promotion and duty assignments of officers previously hired. Since I find the power to designate an assistant chief in the mayor's power to manage and supervise the police force, I need not decide whether its existence is also supported by the mayor's power to appoint.

THEREFORE, IT IS MY OPINION:

In a council-mayor form of government, the mayor, in the exercise of his statutory authority to manage and supervise the municipal police force and absent an ordinance to the contrary, may designate an officer to serve as assistant police chief without prior approval of the municipal council.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/cdt/brf