

48 Op. Att'y Gen. No. 4

CITIES AND TOWNS - Chief law enforcement administrator in commission-executive form of government;
LOCAL GOVERNMENT - Chief law enforcement administrator in commission-executive form of government;
MUNICIPAL GOVERNMENT - Chief law enforcement administrator in commission-executive form of government;
PEACE OFFICERS - Role of mayor as chief law enforcement administrator;
PUBLIC OFFICERS - Role of mayor as chief law enforcement administrator;.
MONTANA CODE ANNOTATED - Sections 7-1-4144, 7-3-201, 7-3-203, 7-32-201, 7-32-216 to -219, 7-32-221, 7-32-231, 7-32-4103, 7-32-4105, 7-32-4108, 7-32-4109, 7-32-4113.

HELD:

The mayor, not the chief of police, is the chief law enforcement administrator in a commission-executive form of local government.

June 17, 1999

Mr. Robert G. Olson
Cut Bank City Attorney
13 East Main
Cut Bank, MT 59427-0547

Dear Mr. Olson:

You have requested an Attorney General's Opinion on the following question:

Who is the chief law enforcement administrator in a commission-executive form of local government: the mayor, or the chief of police?

The term "chief law enforcement administrator" appears in several statutory provisions of the Montana Code, but nowhere is the term defined by law. See Mont. Code Ann. §§ 7-1-4144, 7-2-216 to -219, 7-32-221, 7-32-231. The majority of these statutes referencing a "chief law enforcement administrator" deal with the service of reserve and auxiliary peace officers as those terms are defined in Mont. Code Ann. § 7-32-201(1), (5).

Pursuant to Mont. Code Ann. § 7-32-216, a reserve officer may serve as a peace officer "only on the orders and at the direction of the chief law enforcement administrator of the local government." A reserve officer may not carry a weapon while on assigned duty until authorized by the chief law enforcement administrator. Mont. Code Ann. § 7-32-217. As soon as the reserve officer is appointed by the chief law enforcement administrator, he or she is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state. Mont. Code Ann. § 7-32-218. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated by the administrator at any time. Mont. Code Ann. § 7-32-221. The chief law enforcement administrator is obligated to appoint a full-time law enforcement officer of the agency as a reserve force coordinator. Mont. Code Ann. § 7-32-219. Finally, Mont. Code Ann. § 7-32-231 directs that a local government may authorize auxiliary officers "only on the orders and at the direction of the chief law enforcement administrator of the local government."

Your question is whether, in a commission-executive form of local government, the foregoing duties are performed by the mayor or the chief of police. After comparing the respective positions, I conclude that the mayor is the chief law enforcement administrator in a commission-executive form of local government.

In the commission-executive form of government, the mayor is designated the chief executive officer of the city or town. Mont. Code Ann. § 7-3-201. In that role, the mayor is responsible for the day-to-day administration of the affairs of the municipality. Mont. Code Ann. § 7-3-203. The mayor also has general administrative and supervisory authority over the local police department. Mont. Code Ann. § 7-32-4103. The mayor is given the power to appoint all members and officers of the department, as well as the power

to suspend or remove any member or officer on the force. Mont. Code Ann. §§ 7-32-4103, -4108. All members of the police force are appointed for probationary terms, subject to revocation by the mayor. Mont. Code Ann. § 7-2-4113(1). The mayor is responsible for making rules for the government, direction, management, and discipline of the police force. Mont. Code Ann. § 7-32-4103. Whenever the mayor deems temporary employment expedient for the police department, he or she has the authority to employ temporary assistance. Mont. Code Ann. § 7-32-4109.

The chief of police, on the other hand, is given charge and control of all police officers, but has no responsibility in connection with hiring and terminating officers or setting rules and regulations for the department. Mont. Code Ann. § 7-32-4105(1)(c). The chief has the same powers as a constable in the discharge of his or her duties. Mont. Code Ann. § 7-32-4105(2). The constable's duties are defined under certain provisions relating to the duties of a sheriff. See Mont. Code Ann. § 3-10-702. None of those sections provide authority for the chief of police to hire or fire officers or employees, or to make rules relating to the government, direction, management, or discipline of the police force. The chief's only duty in relation to the officers is to report neglect of duty or misconduct of officers to the council for its action. Mont. Code Ann. § 7-32-4105.

In light of these respective duties, I conclude that the mayor is the "chief law enforcement administrator" in a council-executive form of local government. The mayor is statutorily vested with responsibilities similar to those of the chief law enforcement administrator, while the chief of police is not. To bestow the title of chief law enforcement administrator upon the chief of police would require the chief to perform administrative functions which he or she is not otherwise authorized to do.

THEREFORE, IT IS MY OPINION:

The mayor, not the chief of police, is the chief law enforcement administrator in a commission-executive form of local government.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/ja/dm