

October 19, 2004

Ms. Helen Waldbillig McCarthy
Whitehall Town Attorney
P.O. Box 523
Whitehall, MT 59759-0523

Re: Opinion of the Attorney General

Dear Ms. McCarthy:

You have requested an opinion of the Attorney General on a question that I have phrased as follows:

Does Mont. Code Ann. § 7-32-4118(1) prohibit a law enforcement officer from working one fulltime position as an officer for the Town of Whitehall and a second fulltime position as a Jefferson County Deputy Sheriff?

Since your question may be answered by reference to clear statutory language, it has been determined that a letter of advice rather than a formal opinion is appropriate in response to your question.

Your letter informs me that a person has been appointed to serve as Town Marshal for the Town of Whitehall, a position that has been designated as a full-time position. The same person holds a second full-time position as a Deputy Sheriff for Jefferson County. You inquire whether this arrangement is precluded by the language of Mont. Code Ann. § 7-32-4118(1), which provides:

Work period--days off duty without loss of compensation. (1) The chief of police may establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation. ***The total hours in all work periods in a calendar year may not exceed 2,080.***

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(Emphasis added.)

Nothing in the language of this statute suggests that the legislature intended by it to limit the ability of a municipal police officer to secure an additional law enforcement position from another employer that would require the officer to exceed a total of 2080 hours of payroll time for the two positions together. To the contrary, the language of the statute, read as a whole, suggests that the term “work periods” in the last sentence refers back to the “work periods” established by the municipal chief of police under the first sentence, periods that clearly would not include time spent on the county payroll. This is the most, indeed the only, logical reading of these provisions of the statute. I agree with your analysis that this statute limits only the number of hours that can be worked in one year for the municipal police department employer. It does not preclude the officer from working additional hours for any other employer.

I express no opinion as to whether any other provision of law may affect the propriety of any employment arrangement for the Town. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

CHRIS D. TWEETEN

Chief Counsel

cdt/gg