

December 8, 2008

Mr. Lewis K. Smith
Powell County Attorney
409 Missouri Avenue
Deer Lodge, MT 59722

Dear Mr. Smith:

You have requested an Attorney General's opinion on an issue that has arisen in your county concerning reimbursement of the Justice of the Peace for services provided as city court judge. I have rephrased your question as follows:

Does Montana Code Annotated § 2-2-104(3) preclude a justice of the peace from receiving payment for acting as the city court judge?

Because your question is answered by an accepted maxim of statutory construction and requires consideration of certain facts that are specific to your county it has been determined that a letter of advice rather than a formal Attorney General's Opinion provides the appropriate response to your request.

Montana Code Annotated § 2-2-104 sets forth the rules of conduct for public officers, legislators, and public employees. A public officer is defined to include "any state officer and any elected officer of a local government." As an elected officer of a local government a justice of the peace is governed by the rules of conduct. Subsection (3)(a) provides that a public officer may not:

[R]eceive salaries from two separate public employment position that overlap for the hours being compensated, unless:

- (i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or
- (ii) the public officer's legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the

other public employer in order to avoid duplicate compensation for the overlapping hours.

Mont. Code Ann. § 2-2-104(3).

You have inquired whether this prohibition would preclude the justice of the peace in your county from also receiving compensation for acting as the city court judge. According to the information you provided, the Justice of the Peace receives a set monthly amount of \$600 for services provided and does not satisfy the requirements of (i) or (ii) of section 2-2-104(3).

The arrangement in your county, in which the justice of the peace also acts as the city judge, is one that was explicitly provided for by the Legislature. Montana Code Annotated 3-11-205 provides:

In a town or third-class city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge. The justice of the peace or city judge must reside in the county in which the town or city is situated. The city or town may by ordinance fix the funding for the judge and enter into an agreement with the county, the other city or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the peace or other city judge shall, after agreeing to the designation and after approval by the board of county commissioners or governing body of the city or town, act in that capacity and is the city judge in all cases arising out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town is required to travel from the justice's or judge's place of residence to hold court, the justice or judge must be paid the actual and necessary travel expenses, as provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(Emphasis added.)

Based upon the plain language of section 3-11-205, Montana law allows for a justice of the peace to act as city court judge and to receive compensation for services provided. It is an accepted maxim of statutory construction that “[p]articular expressions qualify those which are general.” Mont. Code Ann. § 1-3-225. Thus, section 3-11-205 which expressly allows for a justice of the peace to receive payment for acting as city court judge qualifies the general prohibition against dual compensation found in the rules of conduct.

This interpretation is consistent with the public policy behind the salary restrictions codified in the rules of conduct. “The general reason for salary limitation for public officers is to preserve separation of powers and to prevent public officials from advancing their own interests at the expense of public welfare.” 49 Op. Att’y Gen. No. 12 (Mont. 2001) *citing* 45 Op. Att’y Gen. No. 10 (Mont. 1993) (holding that public service commissioner who reactivated prior employment in order to be eligible to receive severance payment did not violate code of ethics for state public officials.) In this instance, the arrangement between the Justice of the Peace and the City has been authorized by the legislature and the nominal amount of compensation provided, \$600 a month, actually serves efficiency in the operation of your county and municipal governments. The public welfare is served rather than harmed by such an arrangement.

In your memo in support of your opinion request you state that the City of Deer Lodge had entered into agreements, as provided for in section 3-11-205, from 1989 until 1996 with the Justice of the Peace and Powell County to allow the Justice of the Peace to act as city court judge. You stated that these agreements have not been renewed since 1996. The City of Deer Lodge provided information that the City, County and Justice of the Peace entered into an interlocal agreement in 1989 and that while the contract is “dated” it has continued since that date. Section 3-11-205 sets forth two requirements that must be met in order for the justice of the peace to act as city judge. First, the city council must enact an ordinance fixing the funding for the judge; and, second, the county must enter into an agreement with the “city or town, or the justice of the peace” for payment of salaries and training expenses.

Powell County and the City of Deer Lodge should review the arrangement under which the Justice of the Peace is currently providing services as City Court Judge; however, based upon review of the above statutes such an arrangement is not precluded by Mont. Code Ann. § 2-2-104(3).

This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON
Assistant Attorney General

anb/jym