

July 7, 2009

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

Dear Mr. Smith:

This Office was contacted by the Montana Association of Counties (MACo) requesting clarification of the letter of advice that was issued to you on December 8, 2008. After reviewing the memo provided by MACo, the Office agrees that clarification of that earlier letter would be helpful. As a result I am providing this revised letter, which supersedes the letter that was provided in December.

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?

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 positions 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 to the City 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.

Section 3-11-205, makes it clear that in addition to the justice of the peace agreeing to accept a designation to act as city judge, the board of county commissioners must also approve such an arrangement, including the terms of payment for salary and training expenses, before the justice may sit as city judge. Section 3-11-205 contemplates that compensation may be paid directly to the justice of the peace, however, the county must approve such an arrangement. The justice of the peace may not unilaterally contract to provide services as city judge and may not directly accept payment from the city unless such an arrangement has been approved by the county.

The ability of these provisions of law to coexist is affirmed by the accepted maxim of statutory construction that “[p]articular expressions qualify those which are general.” Mont. Code Ann. § 1-3-225. Thus, the plain language of 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. While such an arrangement, including compensation for salary and training expenses, must be reviewed and approved by the board of county commissioners as described in detail above, I do not believe that such an arrangement, regardless of whether compensation is paid by the city to the county commissioner or directly to the justice of the peace, is precluded by Mont. Code Ann. § 2-2-104(3).

The statutory structure created by the legislature, which expressly authorizes the city council of a third-class city to designate a justice of the peace or the city judge of another city or town promotes the efficient use of resources in small Montana communities. It is reasonable to conclude that the legislature’s intent was to allow a justice of the peace, performing duties in both justice and city court, to be fairly compensated for the services provided. The authority of the county commission to approve or reject any such arrangement is a reasonable means to ensure accountability of the justice in the provision of those services.

The Attorney General’s office does not investigate nor determine violations of Montana’s standards of conduct. Such questions are driven by unique factual situations that are inappropriate for response through an Attorneys General Opinion or letter of advice. This letter simply addresses the question you posed regarding whether Mont. Code Ann. § 2-2-104 precludes a justice of the peace from receiving compensation for acting as city court judge.

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I hope this letter clarifies the concerns raised by MACo. As noted above, this letter replaces the one issued by this office on December 8, 2008.

Sincerely,

ALI N. BOVINGDON

Assistant Attorney General

c: Michael W. Sehestedt, Legal Counsel, MACo