

August 17, 2010

Mr. Albert R. Batterman  
Fallon County Attorney  
P.O. Box 760  
Baker, MT 59313-0760

Re: Justice of the Peace/City Judge

Dear Mr. Batterman:

You have requested an opinion from this office with reference to questions regarding service by the Fallon County Justice of the Peace as Municipal Judge for the City of Baker. Since your questions can be answered by reference to a prior letter of advice from this office, it has been determined that a letter of advice is appropriate in response to your questions.

In your letter you inform us that Fallon County and the City of Baker have been negotiating over the terms under which the Fallon County Justice of the Peace will also serve as Municipal Judge for the City of Baker. It is apparently agreed that there is insufficient work to justify either position as a full-time office, and that some sort of cooperative arrangement under which a single person holds both offices will best serve the needs of the City and County, provided an agreement can be reached on the terms of the arrangement.

The incumbent Justice has proposed that the local governments agree that the combined judge will hold court for 27-28 hours per week for a combined salary of \$34,398, which is the combination of the part-time salaries currently being paid by the City and the County, and that the City agree to reimburse the County for its share of that salary as well as half of the overhead for the courts. She proposes that the judge should not be required to log the number of hours spent respectively on county and city work.

You have objected to this arrangement because you believe that unless the judge is required to account for the hours spent on city and county work, the potential exists that the judge will be compensated by both local governments for the same hours worked in violation of Mont. Code Ann. § 2-2-104(3)(a).

Mr. Albert R. Batterman

August 16, 2010

Page 2

In a July 7, 2009 letter of advice to Powell County Attorney Lewis Smith, this office advised that Montana law contemplates that a justice of the peace may, upon the agreement of the city, county, and justice, serve as city judge and be compensated for serving both local governments. Mont. Code Ann. § 3-11-205. The letter concluded that “[t]he authority of the county commissioners to approve or reject any such arrangement is a reasonable means to assure accountability of the justice in the provision of those services.” Letter of Advice to Lewis Smith, July 7, 2009, at 3. The letter concluded that an arrangement approved by both local governments and the justice under Mont. Code Ann. § 3-11-205 is not precluded by Mont. Code Ann. § 2-2-104(3). Id.

The statutes contemplate that the manner in which a justice is compensated for serving as city judge is to be negotiated among the city, county, and judge. Mont. Code Ann. § 3-11-205; see also Mont. Code Ann. § 3-10-101 (when first or second class cities seek to have city judge duties performed by justice of the peace, “the city and the county shall enter into an agreement for proportionate payment of the justice’s salary . . . and for proportionate reimbursement for the use of facilities.”) No party in these discussions is bound to agree to provisions proposed by another party, and each of the parties may block provisions with which they do not agree by withholding consent to the agreement. Thus, the answer to your second question is that the county commission may decline to allow a justice of the peace to serve as a city judge unless the justice separates justice court and city court duties. The answer to your third question is that if the city, the county, and the justice agree, a justice and city court may have combined hours of operation with the judge logging the time spent on the judicial business of each entity.

I hope you find this helpful. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN  
Chief Civil Counsel

cdt/jym