

VOLUME NO. 38

OPINION NO. 103

CONFLICT OF INTEREST - Applicability of Code of Ethics to elected members of city councils;
LOCAL GOVERNMENT - Applicability of Code of Ethics to elected members of city councils;
MUNICIPAL GOVERNMENT - Applicability of Code of Ethics to elected members of city councils;
PUBLIC OFFICERS - Applicability of Code of Ethics to elected members of city councils;
1972 MONTANA CONSTITUTION - Article XIII, section 4;
MONTANA CODE ANNOTATED - Sections 2-2-101, 102;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 104, 38 Op. Att'y Gen. No. 55.

HELD: The definition of "public officer" in section 2-2-102(6), MCA, includes an elected member of a city council.

4 September 1980

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion concerning whether the definition of "public officer" in section 2-2-102(6), MCA, includes an elected member of a city council. I have concluded that the definition of "public officer" in section 2-2-102(6), MCA, does include an elected member of a city council.

Section 2-2-102(6), MCA, provides that the term "public officer" in the context of Title 2, chapter 2, part 1, MCA, otherwise known as the Code of Ethics, includes "any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state." The ambiguity you have pointed out in this definition is that it is not clear at what point the prepositional phrase beginning with the word "except" concludes. Put another way, did the Legislature intend to except from the definition "legislators, members of the judiciary, and any elected officers of subdivisions of the state," or did it simply intend to except "legislators and members of the judiciary?" (Emphasis added.)

The Code of Ethics was enacted by the Legislature to implement the provisions of Article XIII, section 4, of the 1972 Montana Constitution:

The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees. (Emphasis added.)

The title of the Act implementing this provision of the Constitution lends further support to the conclusion that "elected officers of subdivisions of the state" are to be included in the definition of "public officer."

AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY. 1977 Mont. Laws, Ch. 569.

The title of an act is presumed to indicate the Legislature's intent. Dept. of Revenue v. Puget Sound Power & Light, ___ Mont. ___, 587 P.2d 1282, 1286 (1978).

The purpose of the Code of Ethics is outlined in section 2-2-101, MCA:

The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Clearly, the Legislature intended the Code of Ethics to apply to officers of local governments. If this were not the case, the sections of the Code that are intended to

prescribe "some standards of conduct common to all categories." §§ 2-2-103 and 2-2-104, MCA, would not apply to elected officers of local governments. Such a result would directly conflict with the above stated purpose of the Code of Ethics. A statute should be interpreted so as to avoid absurd results. Montana Power Co. v. Cremer, ___ Mont. ___, 596 P.2d 483, 485 (1979).

Moreover, the term "public officer" must be interpreted to include elected officers of subdivisions of the state in order to insure the coordination of all the sections within the act. Hostetter v. Inland Development Corporation of Montana, 172 Mont. 167, 561 P.2d 1323, 1326 (1977).

Finally, previous opinions of this office have implicitly recognized the application of the Code of Ethics to elected officers of subdivisions of the state. 37 Op. Att'y Gen. No. 104 (1978), and 38 Op. Att'y Gen. No. 55 (1979).

THEREFORE, IT IS MY OPINION:

The definition of "public officer" in section 2-2-102(6), MCA, includes an elected member of a city council.

Very truly yours,

MIKE GREELY
Attorney General