

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 22

CITIES AND TOWNS - Scheduling Heritage Day;
HOLIDAYS - Heritage Day;
LOCAL GOVERNMENT - Scheduling Heritage Day;
MUNICIPAL CORPORATIONS - Scheduling Heritage Day;
MONTANA CODE ANNOTATED - Sections 1-1-216, 2-16-117,
2-18-063, 7-4-102;
MONTANA LAWS OF 1987 - Chapter 431, sections 1, 3.

HELD: The governing body of a political subdivision must schedule the Heritage Day legal holiday on a single calendar day per year.

7 August 1987

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

Must the City of Missoula schedule the Heritage Day legal holiday on a single calendar day or may the City allow the scheduling of different "Heritage Days" by city departments or even by individual city employees?

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You have informed me that Missoula city employees are interested in having individual or departmental holidays. You note that individual holidays would allow general city government to continue regular operations without a day off for Heritage Day and avoid the confusion of the public which may result if the state, the county, and the city each select a different date for Heritage Day.

Section 1-1-216, MCA, setting forth the legal holidays in the state, was amended in 1987 to combine Lincoln's Birthday and Washington's Birthday into one legal holiday and to establish Heritage Day as a legal holiday. 1987 Mont. Laws, ch. 431, § 1.

This amendment will be effective January 1, 1988. 1987 Mont. Laws, ch. 431, § 3. At that time, section 1-1-216, MCA, will provide in part that the Heritage Day legal holiday is

to be observed annually on a date determined by the governing body of each political subdivision for the purposes of that political subdivision and by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system. [Emphasis added.]

§ 1-1-216(1)(1), MCA.

The intention of the Legislature must first be determined from the plain meaning of the words used in the statute. Missoula County v. American Asphalt, 42 St. Rptr. 920, 922, 701 P.2d 990, 992 (1985). In my opinion, the new subsection clearly provides for Heritage Day to be observed on a single date determined by the governing body of each political subdivision. Thus, the City of Missoula would only have authority to set a date for Heritage Day, not to allow departmental or individual holidays.

My opinion is reinforced by the legislative history of the amendment. Representative Richard Nelson, the sponsor of House Bill 708, the bill establishing Heritage Day, testified before the Senate State Administration Committee that Heritage Day "would be a floating holiday which local governments could use at their discretion for a specific purpose such as for a fair or a special celebration that is unique to their own area." Minutes, Senate State Administration Committee, March 20, 1987, p. 1. When Senator Vaughn asked if Heritage Day could be a different day each year, he was told that it would be up to the local

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government. Id., p. 2. The testimony indicates the legislators anticipated a single Heritage Day in each political subdivision.

Section 1-1-216, MCA, lists Montana's legal holidays. City, county, and state offices must remain open on all days "except Saturdays and legal holidays." §§ 2-16-117, 7-4-102, MCA. Section 2-18-603, MCA, provides for an alternate day off when a legal holiday falls on an employee's day off. The statutes treat "legal holidays" as nonbusiness days off for all employees. When read in conjunction with the new subsection which will establish Heritage Day in 1988, they indicate the Legislature intended a single date per political subdivision to be observed as Heritage Day.

The concept of a legal holiday is also better served by a single Heritage Day in each political subdivision. A "holiday" is a day set aside for worship, for reverence to the memory of a great leader and benefactor, to rejoice over a national or historical event, or to rekindle the flame of an ideal; a "legal holiday" is a day designated and set apart by legislative enactment for one or more such purposes. Vidal v. Backs, 21 P.2d 952 (Cal. 1933); 73 Am. Jur. 2d Sundays and Holidays § 2, at 783. A Heritage Day which amounted to nothing more than a personal day off with pay would have no meaning as a legal holiday.

The plain language of the statute, the legislative history, the statutory scheme, and the nature of a legal holiday all lead me to conclude that the City of Missoula must schedule the Heritage Day legal holiday on a single calendar date per year.

THEREFORE, IT IS MY OPINION:

The governing body of a political subdivision must schedule the Heritage Day legal holiday on a single calendar day per year.

Very truly yours,

MIKE GREELY
Attorney General