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From: MACO [MACO@mtcounties.org]
Sent: Wednesday, November 20, 2013 3:12 PM
To: MACO
Subject: 2013 November Memo - Courthouse Closures on Non-Legal Holidays.docx
Attachments: 2013 November Memo - Courthouse Closures on Non-Legal Holidays.pdf

County Elected Officials:

Please see the attached memo from MACO General Counsel regarding the legality of the closure of courthouses and/or county offices on the day after Thanksgiving, or any other non-legal holiday.

Regards,

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TO: All County Elected Officials
FROM: Mike Sehestedt, MACo General Counsel
DATE: November 20, 2013
SUBJ: Courthouse Closures on Non-Legal Holidays

MACo has been asked whether or not County Courthouses and County Offices may be closed on the day after Thanksgiving (or on Christmas Eve, New Year's Eve, Good Friday or any other day not specified as a holiday). The short answer to the question is no for all of the line county offices headed by elected officials with the notable exception of the County Commissioner's office.

County offices and operations not enumerated in 7-4-2211 (set out below), for example the Commissioners' office, county road department, solid waste, weed or health departments may be closed although employees in those departments may not be granted holiday pay or required to take leave for a closure on the Friday after Thanksgiving.

OFFICES THAT MUST REMAIN OPEN

With regard to the Courthouse proper and the County Offices headed by elected officials 7-4-2211(2) provides:

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.

(b) This subsection (2) does not apply to counties operating under the county manager plan.

While Justices of the Peace are not enumerated in 7-4-2211(2) their office hours are fixed at the time their salaries are set under 3-10-208 which provides in part that: ". . . the county commissioners shall designate the office hours for each justice's court." While all days except legal holidays (enumerated or declared) are judicial days, by court rule when

a filing or other deadline occurs on a Saturday (not a legal holiday) the time within which a filing can be accomplished is extended to the “next day which is not a Saturday, Sunday or legal holiday (Rule 6 A. Montana Justice and City Court Rules)

Quite clearly while 7-4-2211(2) gives some flexibility in *the hours* that offices are required to be open it contemplates that the offices will be open *every day in the year except legal holidays and Saturdays*. Similarly Justice Courts which may conduct business even on Saturdays must at a minimum provide for the filing of documents on every day that is not a legal holiday or a Saturday.

Legal Holidays are established by 1-1-216 which provides:

(1) The following are legal holidays in the state of Montana:

- (a) Each Sunday;
- (b) New Year's Day, January 1;
- (c) Martin Luther King Jr. Day, the third Monday in January;
- (d) Lincoln's and Washington's Birthdays, the third Monday in February;
- (e) Memorial Day, the last Monday in May;
- (f) Independence Day, July 4;
- (g) Labor Day, the first Monday in September;
- (h) Columbus Day, the second Monday in October;
- (i) Veterans' Day, November 11;
- (j) Thanksgiving Day, the fourth Thursday in November;
- (k) Christmas Day, December 25;
- (l) State general election day.

(2) (a) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Sunday, the Monday following is a holiday.

(b) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Saturday, the Friday preceding is a holiday.

(c) All other days are business days.

Since neither County Commissioners, nor for that matter District Court Judges, have the authority to declare a day a “legal holiday” and the day after Thanksgiving is not declared a “legal holiday” by statute, it necessarily follows that the Courthouse, the enumerated offices and the Justice Court must remain open for business during the normal Friday business hours. The Friday after Thanksgiving is by law a “business day” and must be treated as such.

The failure to have the enumerated county offices and the office of the Justice of the Peace open during normal business hours on the Friday after Thanksgiving in addition to being unlawful, may have serious consequences in terms of liability. This particularly true of offices involving the Courts and the Clerk and Recorder's Office where a failure to timely file or record documents can have serious consequences. If an individual suffers consequences because they could not file or record a document because the office was improperly or unlawfully closed, the consequences of that failure may become a liability of the county.

This is not to say that the elected officials need to be personally present, or that leave cannot be granted generously to persons working in the office on the Friday after Thanksgiving. What is said is that **the enumerated offices cannot be closed and must be open for business on the day after Thanksgiving. Even if the district judges give their staff the day off and indicate that they won't be in on the day after Thanksgiving, the County cannot close the Courthouse, the enumerated offices or the Justice Court.** It may seem unfair but the District Judges are state officers and their staffs are state employees subject to the rules of the judicial branch and their actions will not protect you or relieve you of your duties under the law.

OFFICES AND OPERATIONS THAT MAY CLOSE

Other County offices and operations are not subject to the requirement of 7-4-2211 that the office be open for the conduct of business "every day in the year except legal holidays and Saturdays". Offices and operations outside this requirement include without limitation such offices or operations as the county commissioners' office, county road and health departments, solid waste, and weed operations. While these offices may be closed without violation of the law, the question of whether not closure is appropriate is a question of policy to be determined on considerations that are unique to each operation and each county.

While there may not be public policy issues that require the office or operation to be open on the day after Thanksgiving, there are issues that arise from the closure of these offices and operations that need to be considered and resolved.

The easiest situation is one which everyone working in the operation would like to take the day off and is willing to either use available leave or take leave without pay. In small offices and operations, giving this option may result in unanimity among the employees and closure of the office and operation will be entirely by agreement (no public policy reason for the operation to be open and nobody wants to work).

In cases where County has no public policy reason to require the office or operation to be open, but there is not unanimity among the employees about taking the day off (want to save leave time for some other purpose, don't have available leave, don't want a day off without pay, etc.) the situation is simple if enough employees want work that the operation can be productive and remain open without compromising safety and/security. In that case the office remains open and those who want to take the day off do so and those who want to work report to work as usual.

The difficulty arises if there is no public policy reason for the office to be open and not enough employees want to work that day to make the work productive or safe and secure. In that case County has two choices. The first is to require a sufficient work force report for work so that the office or operation can work productively, safely and securely. This will mean denying leave to some number of employees who want to take leave that day. In the alternative the County can close the office or operation and give the employees in that operation the choice of taking some form of available paid leave or leave without pay. While this is going to have an impact on moral and personal relationships in the work place there really is not any other choice.

While County as employer has the right control the employees' work schedule and to relieve employees of duties when their work would be unproductive or unsafe, you do not have, outside the possible provisions of a collective bargaining agreement, the authority to grant employees additional time off with pay. It is also poor policy, assuming that you do want to grant the employees in these offices or operations time off with pay, to do so when other county employees are required to either work or use leave. Similarly since 2-18-616 provides that the use of vacation "must be determined by agreement between each employee and the employing agency" you do not have the ability to require an employee to use vacation time for this purpose.

The recommendation is that even though you legally can close county offices and operations outside those enumerated in 7-4-2211 you act with care in doing so.