

Ravalli County Commissioners Office

From: MACO <MACO@mtcounties.org>
Sent: Monday, July 6, 2015 2:59 PM
To: MACO
Subject: Minutes of Closed Meetings

Commissioners, County Clerks and County Attorneys

On October 1, 2015, House Bill 123 will become law. It is a lengthy bill which significantly revises and reorganizes Montana public records law. To give you an idea of the scope of this Bill, it revises 30 statutory sections and repeals 38 statutes. The Bill provides clarifications of definitions, procedures for release of public records and expands the authority of a district court to award attorney fees to a person who prevails in an action brought to enforce the person's right to know or to obtain public records.

We encourage you to work with your County Attorneys to ensure that your County becomes familiar with and complies with HB 123. However, there is one very problematic section which we would like to highlight: Newly added Montana Code Annotated Section 2-3-212(4) states that any time the presiding officer of a public agency closes a meeting to discuss matters of individual privacy or litigation strategy, minutes of such closed meeting shall be taken. These minutes are not available for public inspection except pursuant to a court order.

The amendment to MCA Section 2-3-212 creates a logistical problem because minutes of Commission meetings are required to be available for public inspection and are typically retained at the Clerk and Recorder's Office. Unfortunately, Section 2-3-212 does not state where minutes of closed meetings should be retained. This problem is compounded by House Bill 334, effective on July 1, 2015, which requires that local boards, districts and commissions must submit minutes of their proceedings to the County Clerk and Recorder for electronic storage and retention. Thus every local public agency and subdivision is faced with the dilemma of being required to submit their minutes for public inspection but not disclosing minutes from a closed meeting without a court order.

To resolve this issue, MACo recommends that minutes of closed meetings be secured in the County Attorney's Office. That Office routinely deals with matters which are protected from public disclosure, such as confidential criminal justice information and matters related to the protection or prosecution of juveniles, so it seems appropriate for that Office to also ensure that minutes of closed meetings are not disclosed without a court order. We realize this places an additional burden on the County Attorney's Office, but believe that office is best suited to assume this responsibility.

As always, please feel free to contact us with questions or concerns.

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