

POLICE COMMISSION MINUTES MEETING #11

SEPTEMBER 11TH, 2024 @ 6:00 PM
CITY COUNCIL CHAMBERS – CITY HALL

CALL TO ORDER:

Seven Boyer, Chair called the meeting to order at 6:14 pm.

Members performed the Pledge of Allegiance.

Present were:

- Steven Boyer-Chair (term ends 04/30/2025)
- Wade Svendsbye-Vice Chair (term ends 04/30/2027)
- Karen Dinkins-Secretary (term ends 04/30/2026)

Also, in attendance via zoom, Dean Chisholm (City Attorney) and Mayor Peggy Williams in person.

The minutes from the June 12th, 2024, meeting was read. Steven Boyer made a motion to accept the minutes of the Regular meeting dated June 12th, 2024. Second by Karen Dinkins. Motion passed.

Public Comment on Non-Agenda Items:

DC Orr, 1117 Nevada Ave commented it has been a long-standing pet peeve that committee/commission minutes are not kept. The Police Commission has excellent minutes. The only question is why the minutes are not posted on the city website.

Karen Dinkins responded that she would check with LeAnn about having the minutes posted like how the council minutes are.

Standing Business:

1. Police Commission emails received.
 - a. Steven Boyer asked if the other commission members had checked their email that day. An email was sent out by Dean Chisholm two hours before the meeting. Steven asked Dean Chisholm if it was okay to read the email he had sent out. Dean Chisholm approved this request. Since this email was not included in the packet it has been pasted into the minutes.
 - b. *On Sep 11, 2024, at 3:50 PM, Dean Chisholm <dean@chisholmlawfirm.com> wrote:*
Police Commission Members.

Thank you for willingness to serve your community. I was recently provided a copy of the Police Commission's Agenda for the September 11 meeting. It contains a couple of items that I'd like to provide some information on.

The Agenda indicates that there will be a review of emails received by the Police Commission. As was discussed in the training session with Mr. Clark, personnel matters are generally not public information under the Montana Constitution or Montana law. Montana Code Annotated section 2-3-203 (3) states "The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy

may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open." It appears that some of the emails implicate the privacy rights of two or more employees of the Libby Police Department, neither of whom have waived their right to privacy. If the Commission allows such information or allegations to be aired in a public meeting it could result in lawsuits against the Commission members for violation of privacy, defamation and other torts. It is also true that if any city employee or board member acts outside of the scope of their duties, the City's insurer is not contractually obligated to defend that employee or member, and likely neither is the City. The employee or commission member would be left to pay the costs of their defense and any underlying damages personally.

Second, there is an entry for "Grievance and Complaints." I am aware that Sgt. Buckner has filed an "appeal" of his suspension without pay. That appeal is without merit and cannot be heard by the Police Commission. The relevant statute is MCA 7-32-4164 which states. "

A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:

(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or

(2) to the police commission....

I understand that Sgt. Buckner has filed an "appeal" of his suspension to the Police Commission. However, Sgt. Buckner has already elected to use the grievance procedure of the City's Collective Bargaining Agreement (CBA) to contest his suspension. He is thus precluded by the plain language of the statute from filing another appeal to the Police Commission. The Montana Supreme Court has ruled thusly in City/County of Butte-Silver Bow v. Montana State Board, 225 Mont. 286, 732 P.2d 835 (Mont. 1987). In holding that a discharged police officer was not entitled to appeal his termination to both the Commission and through a CBA grievance, the Supreme Court stated: "Officer Wood seeks further review of the same conduct by a different body. Such an attempt could result in contradictory holdings."

Also, the Police Commission does not have the authority to hear "grievances." As was stated during the training session, as is stated in the Montana Code Annotated, and as is published in the Montana Police Commissions H

Hearing or discussing a "grievance" would be outside the scope of the Police Commission's duties. Again, please understand that the City's insurer is not obligated to defend or indemnify the actions of city employees or commission members who act illegally or outside of the scope of their authority, leaving the commission members to pay the costs of defending and satisfying any legal actions against them.

Finally, it is always useful to review Montana's conflict of interest provisions found at MCA section 2-2-105 which were discussed at the training and violations of which "constitute a breach of the public trust and public duty of office or employment in state or local government." That section notes the impropriety of a member of a commission taking "official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety." In such a case, to avoid violating the state conflict of interest laws, the commission member must recuse themselves or at minimum disclose their personal or private interest in the matter so that the parties involved can seek recusal.

I hope this information is useful to you. Please feel free to contact me if you would like to discuss any of these matters and thank you again for your service to the City of Libby.

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Dean stated:

- Several emails involve the Chief of Police and Ron Buckner and are of a personal nature that can't be discussed in an open forum without the consent of all parties.
- The Ron Buckner grievance has gone to the collective bargaining agency and can't be considered under fair practices
- The Police Commission has no authority to hear citizen complaints. The mayor could delegate if a new policy. Citizen complaints were repealed from the Police Commission decades ago.

Karen Dinkins asked what constitutes collective bargaining or commission? To which Dean Chisholm replied discipline actions could go through the commission and wage issued are protected through the Collective Bargaining Agency (CBA). Ron Buckner can either use the CBA process or the Police Commission but it is taking a second bite at the apple by trying to use both. If he feels State or Federal law has been broken then he can go the MT Dept of Labor or District Court in a law suit. Steven Boyer ask if he elects to involve a personal attorney they CBA or Police Commission. Dean Chisholm responded, he (City Attorney), the Ron's personal attorney and the employee would elect remedy.

Karen Dinkins stated that the agenda item related to the emails was a simple list of the emails received. It included only a) who sent the email, b) the date of the email, c) who the email was to and d) the subject line of the email. How does this violate privacy?

Dean Chisholm responded: When City of Libby employees are implicated, the city is the repository for information regarding one employee about another. Montana's right to know vs. Montana's right to privacy. When a request for information is made to the city then a request to waive privacy rights is sent to the employee.

Public comment:

DC Orr, 1117 Nevada Ave, commented that he waives any rights to personal privacy related to any emails. He asked if this needs to be written or is verbal sufficient? Dean Chisholm responded written always preferable.

2. Police Officer Candidate review – no new candidates to review at the present time. There was a special meeting on June 5th, 2024 for candidate review Vincent Smart. He will be sworn in at the first council meeting in July and attend the academy on August 1st, 2024.

Public comment:

No public comment.

Unfinished Business:

1. Qualifications Checklist for:
 - a. All checklists are complete for the current officers.

Public comment:

No public comment.

New Business:

- Grievances and complaints –
 - Received grievance from Ron Buckner but cannot be discussed as per the earlier conversation.

Public Comment:

No public comment.

General Comments by the Commission:

Karen Dinkins – We all need to review the Police Commission Handbook.

Wade Svendsbye – No comment.

Steven Boyer – No comment.

Public Comment:

No public comment.

ADJOURNMENT:

Motion to adjourn by Karen Dinkins. Second by Wade Svendsbye. Motion passed.

The meeting adjourned at 7:15 pm.

Steve Boyer, Police Commission Chair

Wade Svendsbye, Police Commission Vice Chair

Karen Dinkins, Police Commission Secretary