

VOLUME NO. 38

OPINION NO. 99

DISTRICTING AND APPORTIONMENT COMMISSION - Report due to 47th Legislative Assembly;

ELECTIONS - Reapportionment of congressional and legislative districts;

LEGISLATURE - Receipt of report from districting and apportionment commission;

LEGISLATURE - Reapportionment of congressional and legislative districts;

1972 MONTANA CONSTITUTION - Article V, section 14(3).

- HELD: 1. The districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.
2. The Legislature may recess and reconvene at a later date to receive and make recommendations on the commission's plan.

25 August 1980

Gene Mahoney, Chairman
Districting & Apportionment Committee
c/o Robert B. Person
Legislative Counsel
State Capitol
Helena, Montana 59601

Dear Mr. Mahoney:

You have requested my opinion as to whether the districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.

Perhaps the most significant line of cases that have come from the United States Supreme Court in the last two decades has been the Court's decisions concerning redistricting and reapportionment, commonly known as the "one-man - one-vote" line of cases. These cases require state legislatures to continually update, through redistricting and reapportionment, the boundaries of electoral districts within each state to insure that one person's vote will not have more weight than another person's vote. The watershed case is Baker v. Carr, 369 U.S. 186 (1961), where the Court held that federal courts had authority under the equal protection clause of the United States Constitution to examine the apportionment formulas for electing representatives in the various states. In Reynolds v. Simms, 377 U.S. 533, 555 (1964), the Court stated:

The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of the citizens vote just as effectively as by wholly prohibiting the free exercise of the franchise.

In Gray v. Sanders, 372 U.S. 368 (1962), the court commented:

The idea that every voter is equal to every other voter in a state, when he casts his ballot in favor of several competing candidates, underlies many of our decisions. 372 U.S. 368 at 380.

And the Court held:

The concepts of political equality from the Declaration of Independence, to Lincoln's Gettysburg's Address, to the fifteenth, seventeenth, and nineteenth amendments can mean only one thing--one person, one vote. 372 U.S. at 381.

See also Wesberry v. Sanders, 376 U.S. 1 (1963).

Montana, like most states, has chosen to formally redistrict and reapportion electoral boundaries every ten years following the federal census. The census figures concerning the population of each electoral district are evaluated and the boundaries are redrawn in accordance with the new population figures.

Montana's redistricting and reapportionment scheme is provided in Article V, section 14, Montana Constitution. The Constitution provides that in each legislative session immediately prior to the federal census a commission be appointed by the leadership of the Legislature to prepare a plan for redistricting and reapportionment. Article V, section 14(3) provides:

The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendation. Within 30 days thereafter, the commission shall file its plan with the secretary of state and it shall become law. The commission is then dissolved.

Your question concerns interpretation of that constitutional provision.

The first regular session after the commission's appointment will be the 47th Legislature, which commences in January of 1981. If the census figures are available in December 1980, then the 47th Legislature will also be the first regular session following the date the census figures are available. The constitutional language is clear and unambiguous. The commission must submit its plan to the first regular session after its appointment or at the first regular session after the census figures are available. Where the constitutional language is clear and unambiguous, the plain meaning must be adopted. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1969); Keller v. Smith, 170 Mont. 399, 404, 53 P.2d 1002 (1976). Thus, the commission must submit its plan to the 47th Legislature.

You have also requested my opinion as to whether the Legislature could recess and reconvene at a later time to receive and make recommendations on the commission's plan. The Montana Constitution, Article V, section 6 provides:

The legislature shall meet each odd-numbered year in regular session of not more than ninety legislative days.

Article V, section 10(5), Montana Constitution, provides:

Neither house shall, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the 2 houses are sitting.

It is implicit in the language of the two sections quoted above that the Legislature may recess, with consent of both houses, and reconvene at any time within the odd-numbered year. If the session does not meet in excess of ninety days it would still be considered to be a regular session. As long as the commission submits the plan to the Legislature in regular session, the provision of the Constitution will be satisfied.

You have also asked whether there are any federal statutes that require Congressional redistricting to be completed within a certain time period. Congressional redistricting is a task to be done by the states. But 2 U.S.C. section 2(a) provides that within one week after the commencement of the regular congressional session following the decennial census, the President must submit a statement to the Congress, based on the census results, as to the number of

representatives that will represent each state. This section establishes a formula for electing representatives to the Congress until the state has completed the redistricting process. Generally, under the formula, the representatives will be elected at large if there is a change in the number of representatives the state is entitled to in the next Congress.

THEREFORE, IT IS MY OPINION:

1. The districting and apportionment commission is required to submit its plan to the 47th Legislature if census data is available in December 1980.
2. The Legislature may recess and reconvene at a later date to receive and make recommendations on the commission's plan.

Very truly yours,

MIKE GREELY
Attorney General