

**VOLUME NO. 35****Opinion No. 10**

**CONSTITUTIONAL LAW — Redistricting and reapportionment commission, provision for; ELECTIONS — Redistricting and reapportionment commission, capacity to run for office; LEGISLATURE — Redistricting and reapportionment commission, limitations of; REAPPORTIONMENT — Redistricting and reapportionment commission, capacity to run for office. Article V, section 14, Constitution of Montana, 1972; Chapter 21, Laws of 1973.**

**HELD: The words “legislative seat” as used in Chapter 21, Section 11, Laws of 1973, apply only to a seat in the Montana state legislature.**

March 1, 1973

Representative Larry Fasbender  
House Majority Leader  
Montana House of Representatives  
State Capitol  
Helena, Montana 59601

Dear Representative Fasbender:

You have requested my opinion relative to the intent of a particular provision of Chapter 21, Laws of 1973. Specifically you have asked whether the words “legislative seat”, as contained in section 11 of Chapter 21, apply only to the state legislature, and if not, whether “legislative seat” would then include a city council or school board position, or a congressional seat.

Chapter 21, *supra*, was enacted in order to implement Article V, section 14, Constitution of Montana, 1972, which provides in pertinent part:

- (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative.

Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

Section 1 of Chapter 21, *supra*, contains language essentially the same as that found in Article V, section 14, subsection (2), *supra*. Section 1 states:

During the 1973 legislative session and in each session preceding each federal population census, a commission of five (5) citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into **legislative and congressional districts**. (Emphasis supplied)

Section 11 of Chapter 21 constitutes a limitation on the capacity of districting and apportionment commission members to run for public office subsequent to the dissolution of the commission. This section provides:

A member of the commission may not run for election to a **legislative seat** within two (2) years after the districting and apportionment plan in which he participated becomes effective. (Emphasis supplied)

Pursuant to section 1, Chapter 21, *supra*, the commission is charged with the duty of preparing a plan to redistrict and reapportion the **state** into legislative and congressional districts. As such, the performance of their duty will have virtually no effect upon city, county or school district elections. Given this fact, it would not appear that the legislature intended the prohibition of section 11, Chapter 21, to be construed to include city council or school board members. However, a plan submitted by the commission might well affect the structure of congressional districts and, thus, it is necessary to ascertain whether congressional seats are included within the phrase "legislative seat" as used in section 11.

The rationale behind the prohibition contained in section 11, Chapter 21, *supra*, is to prevent commission members from establishing a plan which would work to their own personal benefit and possibly facilitate their election to office. In construing the scope and meaning of the words "legislative seat" as used in

section 11, it is significant to note that the term "congressional", as used in section 1 of Chapter 21, is not found in section 11. Consequently, although the legislature, in specifying the duties of the commission, directs it "to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts", it only prohibits members of said commission from running for election to a "legislative seat" as more fully explained in section 11.

A frequently quoted maxim of statutory construction is the phrase, "*Expressio unius est exclusio alterius*", which, in essence, means that where a statute expressly describes a particular act, person or situation to which it shall apply, there is an inference that what is omitted was intended to be omitted and excluded. **Dezsofi v. Jacoby**, 36 N.Y.S.2d 672, 675 (1942). By applying this maxim to the instant consideration, it would appear that the legislature, by not including the term "congressional" in the prohibition of section 11, Chapter 21, supra, did not intend that such prohibition apply to anyone other than a prospective candidate for a state legislative seat.

**THEREFORE, IT IS MY OPINION:**

The words "legislative seat", as contained in section 11, Chapter 21, Laws of 1973, apply only to the Montana state legislature.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General