

VOLUME NO. 37

OPINION NO. 115

CONSTITUTIONS - Appointment of judges; CONSTITUTIONAL CONVENTION - Intent as to judicial appointments; DISTRICT COURTS - Appointment of judge; DISTRICT COURTS - Election of appointed judge; GOVERNOR - Appointment of district judge; LEGISLATURE - Senate confirmation of judicial appointment; LAWS OF MONTANA (1977), ch. 517; REVISED CODES OF MONTANA, 1947, Sections 93-705, et. seq., 93-713, 93-714, 93-717; 1972 MONTANA CONSTITUTION - Article V, section 7, Article VI, section 6, Article VII, section 8.

HELD: The Senate confirmation of an individual appointed by the Governor to the office of District Judge is required before that office may be placed on the ballot for election.

10 February 1978

The Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion on the following question:

Is Senate confirmation of an individual appointed by the Governor to the office of District Judge required before that office may be placed on the ballot for election?

Laws of Montana (1977), ch. 517, created the 19th Judicial District, a new judicial district in the State of Montana. Portions of that chapter provided:

The judge in the 19th Judicial District shall be appointed by the Governor under the provisions of 93-705 through 93-717.

On July 20, 1977 the Governor appointed the new judge for the 19th Judicial District, and the Letter of Appointment was recorded in the office of the Secretary of State in the Executive Record.

Section 93-713, R.C.M. 1947, provides that a judge appointed by the Governor to either the district court or the Supreme Court must be confirmed by the Senate. That section provides:

Confirmation by the Senate - Interim Appointment
Each nomination shall be confirmed by the Senate, but a nomination made while the Senate is not in session is effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

Section 93-714 provides that a nominee confirmed by the Senate serves until the next succeeding general election. The above statutory provisions are derivations of the provisions of Art. VII, section 8, Montana Constitution, which provides:

(1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session

shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

The language of the Constitution and the statutes is clear. Each nomination must be confirmed by the Senate. The Senate will next convene in regular session on January 3, 1979. It is my opinion that the district judge appointed in the 19th Judicial District shall serve at least until the end of that legislative session. Candidates for that position would then be placed on the ballot at the first election after Senate confirmation. The next regular general election will be held in November, 1980.

The provisions of Art. VII, section 8 of the Montana Constitution requiring Senate confirmation are clear and unambiguous. Constitutional as well as statutory provisions must be interpreted according to the usual and ordinary meaning of the language used. Matter of McCabe, 168 Mont. 334, 544 P.2d 825 (1975). The terms must be given the natural and popular meaning in which they are usually understood. State v. Moody, 71 Mont. 473, 230 P. 375 (1924); Cashman v. Vickers, 69 Mont. 516, 223 P. 897 (1924).

For the most part, the provisions of the Montana Constitution encourage officials appointed to vacant offices to submit to the electorate at the next regularly scheduled general election. See Art. VI, section 6 Montana Constitution regarding the filling of vacancies in the office of Secretary of State, Attorney General, State Auditor or Superintendent of Public Instruction, or Art. V, section 7 requiring a vacancy in the Legislature to be filled by special election unless otherwise provided by law. Neither of those provisions, however, contain the special require-

ment of Senate confirmation that pertains to judicial vacancies. The rule that where there is no ambiguity in the language of a statute, the letter of the law will not be disregarded under the pretext of pursuing its spirit, applies to the interpretation of a provision of the Constitution. Cruse v. Fischl, 55 Mont. 258, 175 P. 878 (1918).

The intention of the framers of the Constitution may be disclosed by the language employed in the particular provision, when considered within the context of the legislative history of the subject. Northern Pacific Railroad Co. v. Mjelde, 48 Mont. 287, 137 P. 386 (1913). And, it has been held that in construing a provision of the Constitution, recourse can be had to the proceedings of the Constitutional Convention. School District No. 12, Phillips County v. Hughes, 34 St. Rptr. _____, 552 P.2d 328 (1976).

In the course of the Convention's debate on the judicial article a motion was made to strike the provisions requiring Senate confirmation of judicial nominees (Tr. 3413). After limited debate that motion was defeated by a vote of sixty-nine to twenty-six (Tr. 3421). From a review of the transcript of the debate on the judicial article of the Constitutional Convention, it is evident that it was the intent of the Convention that judicial nominees appointed by the Governor would be subject to Senate confirmation.

In 1972, when the Constitution was originally adopted, Art. V, section 6 provided that the Legislature would meet once a year in regular session of not more than sixty days. The provision requiring annual sessions was amended by an initiative petition adopted at the general election of November 5, 1974, effective December 31, 1974. The Constitution now requires the Legislature to meet only in odd-numbered years in regular session of not more than ninety days.

While it may have been presumed by the delegates to the Constitutional Convention that the Senate confirmation process would take place on an annual basis, the effect of the elimination of annual sessions on the judicial nominating process is to allow Senate confirmation only every second year.

THEREFORE, IT IS MY OPINION:

The Senate confirmation of an individual appointed by the Governor to the office of District Judge is required before that office may be placed on the ballot for election

Very truly yours,

MIKE GREELY
Attorney General