

VOLUME NO. 37

OPINION NO. 124

ELECTIONS - General elections; ELECTIONS - Local Government Charter requirements for general election; LOCAL GOVERNMENT - Charter requirements for general election; REVISED CODES OF MONTANA, 1947 - Sections 16-5115.13, 23-2601, and 23-2604.

HELD: The positions on the Anaconda-Deer Lodge Commission are subject to election at the primary and general elections to be held in 1978 and 1980.

24 March 1978

John Radonich, Esq.  
Anaconda-Deer Lodge County Attorney  
Anaconda-Deer Lodge County Courthouse  
108 East Park Avenue  
Anaconda, Montana 59711

Dear Mr. Radonich:

You requested my opinion on the following question:

When must the primary and general elections be held for positions on the Anaconda-Deer Lodge County Commission?

Anaconda-Deer Lodge has adopted a new charter form of government which became effective in the spring of 1977. Members of the commission, the governing board, were elected at a special election in April, 1977. That election was specifically held in lieu of the general election in 1976 to implement the new local government, pursuant to the provisions of section 16-5115.13(2).

Article III, section 3(4), Charter Anaconda-Deer Lodge County provides:

Commissioners shall be elected in the general election for a term of four (4) years by the voters of the county at large. At least two (2) commissioners shall be elected every two (2) years.

Section 16-5115.13(5) provides in pertinent part:

If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office at the first meeting of the commission.

For the new government to comply with the above provisions of section 16-5115.13, the transition schedule of the Charter, Article X, section 3 provided:

Initial Procedures. 1) The commission shall meet on May 2, 1977, to elect its chairman, establish regular meeting dates, provide for appointment of the Manager, and set the agenda for the next meeting. At this first meeting, the Commissioners shall draw lots to establish three (3) terms of office of four (4) years each and two (2) terms of office of two (2) years each. (Emphasis added)

To meet the provisions of the above sections, it was determined by the commission at its first meeting that the commissioners representing districts four and five would initially be elected to short terms. Therefore, in future elections at least two commissioners will be elected every two years.

Your question arises because of the reference to two-year and four-year terms in the transition schedule. If the commissioners are elected at the general elections in 1978 and 1980 the respective terms will be a few months less than two years and the full two-year and four-year terms as provided in the transition schedule, special elections would have to be held in April of every odd numbered year. That section of the transition schedule became inoperative after the first commission meeting pursuant to the Charter, Article X, section 1.

It is my opinion that the language of the transition schedule must yield to the other provisions of the Charter requiring elections to be held at the general election, as well as the provisions of section 16-5115.13(5). Therefore the commissioners that were initially elected in April 1977 will serve terms that are less than two and four years respectively.

Rules of statutory construction apply equally as well to the interpretation of a local government charter, and it is a fundamental rule that statutory construction of provisions regarding the same subject should not lead to contrary

results if reasonable construction will avoid it. State ex rel Ronish v. School District #1 of Fergus County, 136 Mont. 453, 348 P.2d 797 (1960). Each provision must be read in pari materia and given the reasonable interpretation which enables it to be read in harmony with the other provisions, thus giving vitality to the provisions as a whole. Oxford v. Topp, 136 Mont. 227, 346 P.2d 566 (1959); State Board of Equalization v. Cole, 122 Mont. 9, 195 P.2d 989 (1948). The charter provides that commissioners shall be elected in the general election. Section 16-5115.13 also requires at least one commissioner to be elected in 1978. A general election is defined in section 23-2601(2) as:

An election held for the election of officers throughout the state at times specified by law.

Section 23-2604 provides:

General Election -- When to be held. A general biennial election shall be held throughout the state in every even numbered year on the first Tuesday after the first Monday of November.

The statute quoted above provides that the general election shall be held throughout the state in every even numbered year, and that provision necessarily includes communities that implemented new forms of government in April, 1977. The provisions in the statutes and charter implementing the new form of government and those requiring the commission seats to be filled at a general election are not irreconcilable. Read as a whole, the provisions require the elections to be held in conjunction with the state general election.

THEREFORE, IT IS MY OPINION:

The positions on the Anaconda-Deer Lodge Commission are subject to election at the primary and general elections to be held in 1978 and 1980.

Very truly yours,

MIKE GREELY  
Attorney General