

VOLUME NO 37

OPINION NO. 137

CONSERVATION DISTRICTS - Candidates must run on at-large basis throughout entire district; number of candidates to be nominated for general election; determination of staggered terms; ELECTIONS - Candidates must run on at-large basis throughout entire district; number of candidates to be nominated for general election; determination of staggered terms; REVISED CODES OF MONTANA, 1947 - Section 76-106.

- HELD: 1. The candidates for supervisor must run on an at-large basis throughout the entire district in both the nominating and general elections.
2. Each qualified elector may vote for ten (10) candidates in the nominating election and five (5) candidates in the general election when all five district supervisors will be elected.

3. Ten (10) candidates may be nominated to run in the general election wherein all five district supervisors will be elected.
4. A reasonable method of determining which three supervisors will receive the four-year terms must be decided upon by the registrar and made available to all candidates and qualified electors prior to the election.

19 April 1978

Richard Lewellyn, Esq.
Jefferson County Attorney
Jefferson County Courthouse
Boulder, Montana 59632

Dear Mr. Lewellyn:

You have requested my opinion concerning the election of conservation district supervisors. The specific questions presented in your request are as follows:

1. Whether the candidates for supervisor must run in the nominating election on an at-large basis throughout the entire district or only within a particular supervisor area?
2. Whether the candidates for supervisor must run in the general election on an at-large basis throughout the entire district or only within a particular supervisor area?
3. How many candidates may each qualified elector vote for in the nominating and general elections wherein all five district supervisors will be elected?
4. How many candidates will be nominated to run in the general election wherein all five district supervisors will be elected?
5. How is it to be determined which three supervisors will be elected to four-year terms and which two supervisors will be elected to two-year terms?

Section 76-106, R.C.M. 1947, governs the election of conservation district supervisors. The procedure set forth in section 76-106 contemplates each district alternately electing three and two supervisors, respectively, at succeeding general elections. Subsection (1) of 76-106 provides the procedure for electing three (3) supervisors immediately following the establishment of the conservation district. Subsection (2) of 76-106 then requires each district to elect two supervisors in the second general election following organization to replace the two supervisors which are appointed by the Department of Natural Resources and Conservation upon creation of the district. As for existing conservation districts, Laws of Montana, ch. 18, section 4, (1977) reads:

For the purposes of bringing existing districts into compliance with this act by the time of the 1978 general elections the terms of office for all supervisors shall expire upon passage and approval of this act. However, each supervisor shall remain in office until his successor has been elected and has qualified in accordance with this act. For purposes of the 1978 general election three supervisors shall be elected for a 4-year term and the remaining two supervisors elected for a 2-year term. No action or undertaking of a district may be invalidated or voided for failure to comply with the amendatory provisions of this act prior to January 1, 1979.

Your first two questions would be germane to any election of conservation district supervisors. Your last three questions are concerned with the election procedure for addressing existing conservation districts.

In answer to your first two questions, the Legislature has not provided that the supervisors of any district should be elected according to supervisor areas. Section 76-106, R.C.M. 1947, states:

Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the registrar, as defined in Title 23, R.C.M. 1947, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or

supervisor areas thereof, wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 23-351 upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and tabulate the results of such election in the manner provided for by the general election laws of the state.

The election procedure in 76-106 provides guidelines for a district-wide election and does not provide the necessary guidelines for an election in each supervisor area. When interpreting a statute the courts must ascertain what, in terms or in substance, is contained therein and not to insert that which has been omitted. Matter of Baier's Estate, ___ Mont. ___, 567 P.2d 943 (1977).

District supervisors must reside within the boundaries of the conservation district to be eligible for election. 37 OP. ATT'Y GEN. NO. 131 (1977). However, there is no requirement that a supervisor be nominated and elected from the supervisor area in which he resides. Section 76-106(1) provides in part:

A nominating petition may not be accepted by the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides.... (Emphasis added.)

This part of section 76-106 requires a supervisor to reside within the district wherein he or she is nominated. The underscored portion of the sentence does not require the supervisor to be nominated from the supervisor area where he resides. If that were the case, the phrase would read in the singular (e.g., or the supervisor area, wherein the nominee resides). This phrase is only intended to clarify the nominating procedure when the district is divided into supervisor areas by allowing ten persons within the district to nominate a candidate even though all ten persons may not reside within the same supervisor area, and cannot be relied upon for the proposition that supervisors must be nominated and elected according to the supervisor area wherein they reside.

In response to your third and fourth questions, 76-106 allows the nomination of six (6) candidates when three (3) supervisors are to be elected in the general election, and four (4) candidates when two (2) supervisors are to be elected. The Legislature clearly intended to permit twice the number of candidates as the number of offices to be filled in the general election. Therefore, each qualified elector may vote for a maximum of ten (10) candidates in the nominating election and five (5) candidates in the general election, and a maximum of ten (10) candidates may be nominated to run in the general election.

Your final question cannot be answered precisely. The Legislature has required that three supervisors be elected for four-year terms and two supervisors be elected for two-year terms. The Legislature failed to provide a method of determining which three supervisors receive the longer terms. Some suggestions for a reasonable method of determination are provided, but the ultimate decision is left to your discretion.

Perhaps the method provided in section 16-5115.13 for the election of new officials under a new form local government could be used. This method would require the supervisors to draw lots to establish their respective term of office at the first meeting of the district.

Another suggestion is to award the four-year terms to the three supervisors receiving the most votes, with the remaining two supervisors filling the two-year terms.

Whatever method is adopted, all candidates and qualified electors should be apprised of the method to be employed prior to the election. The electors can be informed by a short explanation appearing on the ballot.

THEREFORE IT IS MY OPINION:

1. The candidates for supervisor must run on an at-large basis throughout the entire district in both the nominating and general elections.
2. Each qualified elector may vote for ten (10) candidates in the nominating election and five (5) candidates in the general election when all five district supervisors will be elected.
3. Ten (10) candidates may be nominated to run in the general election wherein all five district supervisors will be elected.
4. A reasonable method of determining which three supervisors will receive the four-year terms must be decided upon by the registrar and made available to all candidates and qualified electors prior to the election.

Very truly yours,

MIKE GREELY
Attorney General