

VOLUME NO. 40

OPINION NO. 13

ELECTIONS - Length of term of office of district judges elected in 1983;

JUDGES - Length of term of office for district judges elected in 1983;

MONTANA CODE ANNOTATED - Sections 1-2-102, 3-1-1014, 3-5-203, 13-1-104(2), 13-1-107(2), 13-14-112;

MONTANA CONSTITUTION - Article VII, section 7(2);

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 2 (1983);

SESSION LAWS OF 1983 - Senate Bill 26.

- HELD: 1. The length of term of office for new district judges elected at the 1983 general election as provided for in Senate Bill 26 is six years.
2. Sections 13-1-104(2), 13-1-107(2), and 13-14-112, MCA, are applicable to those elections held in 1983 for the purpose of filling new judgeships created by Senate Bill 26.

13 June 1983

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have asked my opinion on the length of term of office for a judge elected under the recently enacted

legislation that creates new judgeships in certain judicial districts in the state. Senate Bill 26, signed into law on March 30, 1983, increases the number of judgeships in several judicial districts and provides that the new judgeships may be initially filled at either the 1983 or 1984 general election. The relevant provisions read:

Section 3. Selection of new judges.

(1) Except as provided in subsection (2), the judgeships created by this act shall be initially filled at the 1984 general election, and the individuals elected shall take office on the first Monday of January, 1985.

(2) A judgeship created by this act may be initially filled at the 1983 general election if a majority of the county commissioners in each county within the judicial district where the judge will be elected agree to conduct the election. The individual elected shall take office on the first Monday of January, 1984.

The length of term of a district court judge is six years as set forth in article VII, section 7(2) of the Montana Constitution. The statutory provision is found at section 3-5-203, MCA. Neither the Montana Constitution nor the statute relating to the length of term of a district judge was altered by Senate Bill 26.

The original version of Senate Bill 26, as it was introduced, did provide that the terms of office of judges elected between the 1983 and 1988 general elections, including those individuals who were initially elected to fill the newly created judgeships, would all expire on January 2, 1989. Thus, under the terms of the original bill, the first group of judges elected to fill the newly created positions would not serve full six-year terms. According to the minutes of the Senate Judiciary Committee of February 2, 1983, the provision for shortened terms was deleted by a unanimous vote. The record reflects that the reasons for the deletions were the apparent conflict with article VII, section 7(2) of the Montana Constitution, as well as foreseeable problems with effective dates and the assignment of holdover judges.

During the period that Senate Bill 26 was under consideration, an Attorney General's opinion was issued regarding the shortening of terms of state senators. 40 Op. Att'y Gen. No. 2 (1983). The opinion concluded that where the length of terms of state senators was set by the Montana Constitution and no authority had been established for changing the length of those terms, the terms could not be shortened. Similarly, there is no authority for shortening the terms of the newly elected district judges. It has been suggested that the first election for the new judgeships be compared to the filling of vacancies in office, the terms of which all expire in 1989. However, there is no indication that the Legislature intended this result, and such an interpretation would require the creation of fictional judgeships which supposedly existed before the passage of Senate Bill 26. Moreover, to consider the new judgeships as vacancies in previously existing offices begs the question of when the first terms expire. Under section 3-1-1014, MCA, persons who are elected to fill a vacancy hold office for the remainder of the unexpired term. Since not all of the terms of currently existing district judgeships expire in the same election year, it would be arbitrary to choose 1989 as the year in which the terms of the new "vacant" offices expire. The Legislature considered and rejected the idea of providing new judges with terms less than six years. I am not empowered to achieve through an Attorney General's Opinion a result which the Legislature rejected. See Murray Hospital v. Angrove, 92 Mont. 101, 116, 10 P.2d 577, 583 (1932). I therefore conclude that judges elected in 1983 pursuant to Senate Bill 26, section 3(2), serve six-year terms as provided in the Montana Constitution article VII, section 7(2), and section 3-5-203, MCA.

You have also asked whether sections 13-1-104(2) and 13-1-107(2), MCA, are applicable where counties have opted to fill a newly created judgeship at the 1983 general election. Section 13-1-104, MCA, provides the times for holding general elections. Subsection (1) sets forth the schedule for general elections held in even-numbered years, and lists those offices for which such an election is to be held, including the office of district court judge. Subsection (2) provides the time for holding general elections in odd-numbered years, and its list of officers to be elected includes:

[M]unicipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law. [Emphasis added.]

The language of subsection 1, concerning general elections held in even-numbered years, specifically refers to the office of district court judge, and thus seems to be in conflict with section 3(2) of Senate Bill 26, which provides for the election of district court judges in an odd-numbered year. However, in light of the express authority granted in Senate Bill 26 to elect certain district court judges in odd-numbered years, the underlined language of subsection 2 of section 13-1-104, MCA, is applicable. In Montana, when a general statute is in conflict with a specific act, the specific statute will take precedence. § 1-2-102, MCA; In re Coleman's Estate, 132 Mont. 339, 317 P.2d 880 (1957).

Generally, where statutes irreconcilably conflict, the latest statute supersedes the prior enactment. Dolan v. School District No. 10, Deer Lodge City, 38 St. Rptr. 1903, 1907, 636 P.2d 825, 828 (1981). In this case, under the more recently enacted Senate Bill 26, those counties which opt to fill a newly created judgeship at the 1983 general election would follow the schedule for an election held in an odd-numbered year under section 13-1-104(2), MCA. Likewise, the statute that provides the time for holding a primary election preceding a general election held in an odd-numbered year is applicable. § 13-1-107(2), MCA.

Finally, you ask whether section 13-14-112, MCA, applies to those individuals who run for one of the newly created judgeships under Senate Bill 26, section 3(2). Section 13-14-112, MCA, requires the filing of declarations for nominations of nonpartisan candidates, including candidates for judicial office. Senate Bill 26 does not affect these requirements and they remain operable for all judicial candidates. Every new act takes its place as a component part of an extensive system of existing law. 2A Sutherland, Statutes and Statutory Construction § 53.01 (4th ed. 1973).

THEREFORE, IT IS MY OPINION:

1. The length of term of office for new district judges elected at the 1983 general election, as provided for in Senate Bill 26, is six years.
2. Sections 13-1-104(2), 13-1-107(2), and 13-14-112, MCA, are applicable to those elections held in 1983 for the purpose of filling new judgeships created by Senate Bill 26.

Very truly yours,

MIKE GREELY
Attorney General