

VOLUME NO. 41

OPINION NO. 51

COUNTY COMMISSIONERS - Shortening terms of office of commissioners;  
LOCAL GOVERNMENT - Recommendations of local government study commission;  
LOCAL GOVERNMENT STUDY COMMISSIONS - Recommendation to shorten terms of county commissioners;  
MONTANA CODE ANNOTATED - Title 7, chapter 3, parts 2 to 7; sections 7-3-102, 7-3-111, 7-3-171 to 7-3-193, 7-3-185(1)(a)(i), 7-3-224, 7-3-318, 7-3-418, 7-3-517, 7-4-2105;  
MONTANA CONSTITUTION - Article XI, section 3(2).

HELD: A local government study commission may recommend that the terms of office for county commissioners be less than six years if the county has adopted the statutory county "commission form" of government. A local government study commission may not, however, recommend that the terms of office for county commissioners be less than six years if the county retained the form of government organized under the general statutes listed in section 7-3-111, MCA.

3 March 1986

Michael G. Alterowitz  
Carbon County Attorney  
Carbon County Courthouse  
Red Lodge MT 59068

Dear Mr. Alterowitz:

You have asked my opinion on the following question:

May a local government study commission recommend that county commissioner terms of office be shortened from six years to four years?

The answer to your question depends upon what form of government Carbon County has.

In 1975, the Legislature established five basic optional forms of local government, plus a charter form. § 7-3-102, MCA. The optional forms of government are provided for in Title 7, chapter 3, parts 2 to 7, MCA. Those county governments with an elected county official form of government that did not adopt one of the six statutory forms are controlled by certain designated statutes, which are currently listed in section 7-3-111, MCA. Section 7-3-111(2), MCA, provides: "This form has terms of 4 years for all elected officials except commissioners who are elected to 6-year terms." (Emphasis added.) The language of the statute does not permit any flexibility in the length of terms of office for county commissioners.

By contrast, county governments who adopted the "commission form" of government as one of the six

optional statutory forms of government are governed by Title 7, chapter 3, part 4, MCA. Section 7-3-418, MCA, permits some flexibility in the length of term of county commissioners by providing that: "The term of office of elected officials may not exceed 4 years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution may not exceed 6 years." (Emphasis added.)

Beginning in 1979 the Legislature enacted procedures allowing voters to alter their form of local government. In 1983 the Legislature adopted sections 7-3-171 to 193, MCA, which provide the mechanism by which a local government study commission can recommend a change in government and the electors can vote on the study commission's recommendations. A local government study commission's recommendations may include a proposal to make amendments to the existing form of government, pursuant to section 7-3-185(1)(a)(i), MCA, so long as the change is one that is permitted in the statutes.

If a county retained its old form of government and is governed by the general statutes listed in section 7-3-111(2), MCA, which sets six-year terms for county commissioners, a local government study commission may not recommend an amendment that would change the term of office, since section 7-3-111(2), MCA, permits no such flexibility. If, however, a county has a statutory county commission form of government authorized by Article XI, section 3(2) of the Montana Constitution, and is thereby governed by section 7-3-418, MCA, a local government study commission may recommend any term of office not to exceed six years, because section 7-3-418, MCA, merely provides that a six-year term is the maximum term of office. Please note that no such flexibility in terms of office for county commissioners is permitted under the statutory commission-executive form of government, the commission-manager form of government, and the commission-chairman form of government. §§ 7-3-224, 7-3-318, 7-3-517, MCA.

You refer to section 7-4-2105, MCA, the first sentence of which requires six-year terms of office for county commissioners and thereby conflicts with section 7-3-418, MCA. The enactment of the first sentence of section 7-4-2105, MCA, however, precedes the enactment of section 7-3-418, MCA. Earlier statutes, to the

extent of any repugnancy, are controlled by later statutes. State ex rel. Wiley v. District Court, 118 Mont. 50, 55, 164 P.2d 358, 361 (1946).

THEREFORE, IT IS MY OPINION:

A local government study commission may recommend that the terms of office for county commissioners be less than six years if the county has adopted the statutory county "commission form" of government. A local government study commission may not, however, recommend that the terms of office for county commissioners be less than six years if the county retained the form of government organized under the general statutes listed in section 7-3-111, MCA.

Very truly yours,

MIKE GREELY  
Attorney General