

Park Commissioners, Authority Of Under Commission Form of Government. Commission Form of Government, Park Commissioners Under. Cities and Towns, Commission Form of Government.

By the provisions of Chap. 57, Laws of 1911, the duties theretofore devolving upon park commissioners are to be performed by the members of the city council, and the Park Commissioners appointed by the Governor are without authority.

June 4, 1912.

Mr. J. M. Price,
Park Commissioner,
Missoula, Montana.

Dear Sir:

I acknowledge receipt of your letter of May 22nd, wherein you request my official opinion upon the question as to

“whether the park commission that was appointed by the Governor has authority to act under a Commission form of government.”

It seems that the city of Missoula has taken advantage of the provisions of Chap. 57, Laws of 1911, known as the “Commission Form of Government Act.” The appointment of yourself and associates as the Park Commission of the City of Missoula was made by the Governor pursuant to the provisions of Sec. 3318 et seq., of the Revised Codes of Montana. In the enactment of Chap. 57, it appears that it was the intention of the legislature to provide for the complete and entire government of a city adopting the commission form of government by the mayor and commissioners. Sec. 18 of said Act provides:

“The council shall have and possess, and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed and exercised by the * * * park commissioners * * * and other executive and administrative officers in cities organized under the general municipal incorporation laws.”

It is my opinion that by this provision the duties of the park commission, as prescribed in Secs. 3318 et seq., of the Revised Codes are to be assumed by the council of the city adopting the commission form of government.

The supreme court, in the case of State ex rel Gerry v. Edwards, 42 Mont., 135, declared the act of 1901 (Secs. 3318, et seq. Revised Codes) to be void in so far as it attempted to give authority to the park commissions appointed by the governor to levy and collect taxes for park purposes, and that decision has the effect of making the park commissioners appointed by the governor merely advisory to the city council.

Yours very truly,

ALBERT J. GALEN,

Attorney General.