

**Consolidation—Cities—Counties—Delegation—Electors.**

The electors in the territory affected by a proposed plan of consolidation of a city and county government cannot be given authority to repeal or amend the law passed by the legislature embodying the proposed plan of government.

The authority of the electors is confined to approval or rejection of the proposed plan.

Hon. John J. Caplis,  
Member House of Representatives,  
Helena, Montana.

January 30, 1925.

My dear Mr. Caplis:

You have submitted to me a copy of the consolidation measure for the proposed consolidation of the government of the county and city of Butte and have asked my opinion as to whether the following clause may be added to the measure:

“This act may be repealed or amended by submission to the voters of the county and city of Butte as provided in this act for referendum measures.”

The constitutional amendment authorizing the legislative assembly to provide a plan of consolidating county and city governments is section 7 of article XVI, which provides:

“The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal govern-

ment for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved."

This constitutional provision gives the legislature authority to propose any plan, kind, manner or form of municipal government for counties and cities, but may not be made effective without an approving vote of the electors in the territory affected.

The legislature proposes the plan and the electors in the territory affected must either approve or reject the proposed plan, but have no authority to repeal or amend the proposed plan.

To permit the electors of the county and city to repeal or amend an act of the legislature would amount to a delegation to the electors of Silver Bow county and the city of Butte of legislative powers, which, under the constitution (section 1 of article V) is vested in the legislative assembly and subject to certain limitations in the people of the state.

It is, therefore, my opinion that the clause above referred to, if inserted in the proposed consolidation measure, would contravene the provisions of our constitution.

Very truly yours,  
L. A. FOOT,  
Attorney General.