

VOLUME NO. 34

Opinion No. 49

**CITIES AND TOWNS - Commission-manager form of government; petitions; CITIES AND TOWNS - Elections; petitions; commission-manager form of government; ELECTIONS - Cities and towns; petitions; commission-manager form of government. Section 11-3202, R.C.M. 1947.**

**HELD: Petitions for a city election on the adoption of a commission-manager form of government require the signatures of presently qualified electors totaling not less than twenty-five percent of the number of qualified electors registered for the last preceding general municipal election.**

August 10, 1972

Mr. J. Fred Bourdeau  
Cascade County Attorney  
County Courthouse  
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion as to whether section 11-3202, Revised Codes of Montana, 1947, requires not less than twenty-five percent of the qualified electors of the city of Great Falls who were actually registered for the last preceding general municipal election to be signatories on a petition for a special election under Title 11, chapter 32, R.C.M. 1947.

Section 11-3202, *supra*, reads as follows:

“Upon a petition being filed with the city or town council, **signed by not less than twenty-five percent of the qualified electors of such municipality registered for the last preceding general municipal election**, praying that the question of reorganization under this act be submitted to the qualified electors of such municipality, said city or town council shall thereupon, and within thirty days thereafter, order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this act shall be submitted to the qualified electors of such municipality.

“Such order of the city or town council shall specify therein the time when such election shall be held, which must be within ninety days from the date of filing of such petition.”

Your question could result in two alternative interpretations: first, that section 11-3202, *supra*, refers only to the total number of signatures necessary by qualified electors, whether they were registered in the city of Great Falls before or after the last preceding general municipal election; or, second, that section 11-3202, *supra*, not only refers to the total number of signatures necessary but also identifies the signatories as being qualified electors of the city registered before the last preceding general municipal election.

If the second interpretation were adopted, the following situations could result: First, it would freeze those persons eligible to petition for a change in the form of government to those persons who were actually registered prior to the last general municipal election. In determining valid signatures there would be no provision made for those persons who are no longer qualified electors in the city of Great Falls by reason of death, conviction of a felony, change of residence from the city, or any other reason for loss of qualified elector status under the laws of Montana. As there would be no provision for elimination of those persons mentioned above, the actual percentage of petitioners necessary for a change could raise the standard above the twenty-five percent contemplated by the legislature. For example, if a municipality has 100 qualified electors registered at the last general municipal election, and

25 of those electors ceased to be qualified, the electoral base would then become 75. For a proper petition, however, 25% of the 100 originally registered would be needed as signatories for a valid election. Twenty-five percent of 100 is 25, but 25 is 33⅓% of the 75 electors remaining eligible to sign a petition.

Second, those persons who were not registered for the last preceding general municipal election would be excluded from participation in the petition process in the municipality. Since the last general municipal election in the city of Great Falls, a large number of persons have become qualified electors, many of whom have registered to vote. If the second interpretation were adopted, the following groups of people would be excluded from participation in the petition process: Persons who have become qualified electors by reason of reaching the age of majority; persons who had moved to the city of Great Falls prior to the last general municipal election but were not eligible under section 11-716, R.C.M. 1947, by virtue of their having resided within the city for less than six months; and persons who have since the last general municipal election moved to the city of Great Falls and who have registered to vote.

There is no doubt that under section 11-3202, *supra*, a valid petition must be filed before the residents of Great Falls would have the right to vote. The petition process under that section is an integral part of the right to vote. The effect of adopting the second interpretation of section 11-716, *supra*, would be to establish a durational residency requirement for the right to petition for an election. A durational residency requirement of three months to a year for the right to vote has been held by the United States Supreme Court to constitute a violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States in the case of **Dunn v. Blumstein**, U.S. , 31 L.Ed.2d 274, 92 S. Ct. (March 21, 1972).

If the second interpretation were adopted, under the **Dunn v. Blumstein** test, it would be necessary for the state to show "a substantial and compelling reason for imposing durational residence requirements." **Dunn v. Blumstein**, *supra*, 31 L.Ed.2d 280. While a city charter is a document that should not be changed in haste, there seems to be no compelling reason for excluding persons who are residents of the municipality, either since birth, and now have achieved the age of majority, or since December of 1970 (five months before the last general municipal election).

If the first interpretation is adopted, all of the city's interests in requiring a substantial minority of the residents to speak on the question are served. A specific total of the number of petitioners required is determinable.

The statute can clearly be interpreted to support either of the alternate interpretations. If the second interpretation is adopted, that interpretation would in all probability be declared unconstitutional as violating the rationale of **Dunn v. Blumstein**, *supra*.

The Montana Supreme Court has indicated that:

“An act of the legislature is presumed to be valid; every intendment is in favor of upholding its constitutionality; it will not be condemned unless its invalidity is shown beyond a reasonable doubt . . .” **Billings Properties, Inc. v. Yellowstone County**, 144 Mont. 25, 30, 394 P.2d 182 (1964).

Thus, an interpretation of section 11-3202, *supra*, which will uphold its constitutionality must be favored.

THEREFORE, IT IS MY OPINION that section 11-3202, R.C.M 1947, requires the signatures of presently qualified electors of the city of Great Falls totaling not less than twenty-five percent of the number of qualified electors of the city who were registered for the last preceding general municipal election.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General