

VOLUME NO. 35

Opinion No. 28

**JUSTICE COURT — Legislature may increase number per county;
JUSTICE COURT — Number allowed per county. Article VII, section 5,
1972 Montana Constitution.**

- HELD:**
- 1. Only one justice of the peace will be elected in each county in the 1974 elections, unless otherwise specified by the action of the 1974 legislature.**
 - 2. Only the legislature may provide for additional justices of the peace and no such power lies with the county commissioners.**

September 24, 1973

Mr. Harold F. Hanser
Yellowstone County Attorney
Office of the County Attorney
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. Under the new constitution, is there only one justice of the peace in each county for the 1974 elections?

2. If additional justices of the peace are required, as stated under subsection 3 of Article VII, section 5, can the legislature **only** provide for these additional justices of the peace?

3. Does the power lie with the legislature **only** or can the board of county commissioners determine the number of justices of the peace in their respective counties?

The 1889 Montana Constitution, in Article VIII, section 20, provided:

There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years.

The 1972 Montana Constitution, in Article VII, section 5, provides:

Section 5. Justices of the Peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) ***

(3) The legislature may provide for additional justices of the peace in each county.

In the construction of a statute, the intention of the legislature is always to be pursued if possible. Section 93-401-16, Revised Codes of Montana, 1947. This rule of construction may also be applied to the interpretation of the constitution. The Montana Supreme Court in interpreting statutes has said:

... in the construction of a statute, the intention of the legislature is to be pursued, if possible. And we must look not only to the words employed, but also to the evil to be remedied. **State ex rel. Boone v. Tullock**, 72 M. 482, 487, 234 P. 277 (1925).

In a later case the court said that the intention of the legislature must control, and to ascertain that intention, recourse must first be had to the language employed and the apparent purpose to be subserved. **McNair v. School Dist. No. 1**, 87 M. 423, 426, 299 P. 188, 69 ALR 866 (1930). Thus, looking to the language of this section of the constitution, it is clear that the intent of the Montana Constitutional Convention was that one justice of the peace would be elected unless or until the legislature determined that additional justice courts were needed in a particular county. This intent is further established by the record of the Montana Constitutional Convention. In debate on the judiciary article there was extensive discussion on whether to keep justice courts as constitutional courts. (Transcript of Proceedings, Montana Constitutional Convention, Vol. V, starting at p. 3115 (1972)). The convention, having resolved into a committee of the whole, initially adopted the minority

proposal of the judiciary committee. This proposal had no mention of the justice courts but left to the legislature the power to establish such inferior courts. (Judiciary Committee Proposal, No. 5, p. 40, (Feb. 17, 1972)). However, after much debate, the majority's proposal for justice courts was adopted as a provision of the minority report, thus making justice courts constitutional courts. (Transcript, Vol. V, supra, at 3546.) Except for style and drafting changes, it was this majority proposal that was adopted as Article VII, section 5, of the 1972 constitution. Comments made by the judicial committee on the majority report concerning justices of the peace were as follows:

Section 16 [the provision for justice courts in the majority proposal] requires that there be one justice of the peace in each county rather than two justices of the peace in each township. Under the present section 20 and interpretation of it, there must be two townships in each county and two justices of the peace to each township. Thus, a county, no matter how large or small, must have a minimum of four justices of the peace under Article VIII, Section 20 of the 1889 Constitution.

Instead of a minimum of four justices of the peace to each county, the majority proposal provides for a minimum of one for each county. **The majority committee believes that in some counties one justice of the peace will be sufficient. However, if circumstances demand, the legislature may provide for additional justices of the peace.** (Emphasis supplied) **Judiciary Committee proposal**, supra, at 26.

These comments were reiterated in debate before the committee of the whole. (Transcript, Vol. V, supra, at pp. 3129, 3130, 3182 (1972)).

Hence, it is apparent that the framers of the 1972 constitution intended to limit the number of justice courts in each county to one, unless or until the legislature determined that more were needed in a particular county.

As to the number of justices of the peace on the ballot for the 1974 elections, section 23-3305, R.C.M. 1947, provides that all nominating declarations for judges shall be filed not later than 5:00 p.m. forty (40) days before the date of the primary election. Therefore, in 1974 the declarations must be filed by April 25. The legislature will have convened before that date, and could provide for additional justice courts in any particular county. If so, the ballot in that county would contain these additional justice court openings. However, if the legislature does not provide for additional justices of the peace in a particular county, then only one justice of the peace shall be elected in that county in the 1974 elections.

THEREFORE, IT IS MY OPINION:

1. There will be only one justice court in each county for the 1974 elections unless otherwise specified by the action of the 1974 legislature.

2. Only the legislature may provide for additional justices of the peace in each county, and no such power lies with the county commissioners.

Very truly yours,

ROBERT L. WOODAHL
Attorney General