

VOLUME NO. 35

Opinion No. 6

CONSTITUTIONAL LAW — Legislature, bicameral system; CONSTITUTIONAL LAW — Legislature, convening for special session; LEGISLATURE — Bicameral houses; LEGISLATURE — Special sessions, majority of each house required. Article V, sections 1, 6, 10, Constitution of Montana, 1972.

HELD: Article V, section 6, Constitution of Montana, 1972, requires a written request of a majority of each house of the legislature to call the legislature into special session.

February 6, 1973

Senator Jim Moore
Senate Minority Leader
Montana State Senate
State Capitol
Helena, Montana 59601

Dear Senator Moore:

This is in response to your request for my opinion concerning an interpretation of Article V, section 6, Constitution of Montana, 1972. Your question may be stated as follows:

Whether the legislature may reconvene itself on a vote of the majority of the total membership of the legislature or a majority of each body of the legislature.

Article V, section 6, Constitution of Montana, 1972, states:

The legislature shall be a continuous body for two-year periods beginning when newly-elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than sixty legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special session by the governor **or at the written request of a majority of the members.** (Emphasis supplied)

34 Opinions of the Attorney General, no. 61, considered similar language found in Article V, section 11 (1), concerning the passage of a bill by majority of the members of the legislature present and voting. In that opinion I concluded that such language required a majority of each house of the legislature present and voting thereon.

Article V, section 1, Constitution of Montana, 1972, provides:

The legislative powers vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

By the constitution the people have established a legislature consisting of two independent bodies. The history of the bicameral legislative body indicates that each house is to have an absolute veto power over the actions of the other. See **Story's Commentaries on the Constitution of the United States**, pages 407 et seq.

Further impetus is given to the proposition that dual concurrence is needed by each house of the legislature by reference to Article V, section 10 (5), which states:

Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

If each house needs the concurrence of the other house to adjourn, it is only logical that dual concurrence is needed for reconvening a legislative session.

If one house of the legislative body could impose its will upon the other house without its concurrence, the purpose of a bicameral system would be defeated. As indicated by Article V, section 1, *supra*, the term "legislature" is a generic term referring to the branch of government acting, while the individual houses are *specie* terms defining the particular bodies acting. As stated in **34 Opinions of the Attorney General**, no. 61:

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The phrase "all members (of the legislature) ..." merely denotes the body acting and does not define its functions. The constitution created a bicameral system and each body must operate independent of the other."

In order to preserve the bicameral system, each house of the legislative branch of government must act in independent concurrence.

THEREFORE, IT IS MY OPINION:

Article V, section 6, requires independent concurrence by a majority of the members of each house to reconvene for a special session of the legislature.

Very truly yours,

ROBERT L. WOODAHL
Attorney General