

VOLUME NO. 35

Opinion No. 7

CONSTITUTIONAL LAW — Legislature, special session; LEGISLATURE Special session, convene by recorded vote. Article V, section 6, Constitution of Montana, 1972.

HELD: The legislature may convene itself in special session by a recorded vote of the majority of each house.

February 7, 1973

Senator Neil J. Lynch
Senate Majority Leader
Montana State Senate
State Capitol
Helena, Montana 59601

Dear Senator Lynch:

This is in response to your inquiry concerning Article V, section 6, Constitution of Montana, 1972. Your question may be stated as follows:

Whether a recorded vote by the houses of the legislative assembly meets the requirements of Article V, section 6, Constitution of Montana, 1972, for reconvening the legislative assembly in special session.

Article V, section 6, *supra*, 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 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or **at the written request of a majority of the members.** (Emphasis supplied)

Thus, for the legislature to reconvene itself, the action must be commenced by a written request of a majority of its members. The term "written request", although used previously in the laws of Montana, has not been defined by the supreme court of this state. The Montana Supreme Court has said, however, in **Montana Association of Tobacco and Candy Distributors v. State Board of Equalization**, 156 Mont. 108, 476 P.2d 775 (1971), that the provisions of a statute must be given their plain, clear meaning. **Webster's Seventh New Collegiate Dictionary**, 1967 edition, defines the term "writing" as follows:

1: the act or process of one who writes: as a: the act or art of forming visible letters or characters; *specif*: HANDWRITING 1
b: the act or practice of literary, journalistic, or other composition 2: something written: as a: letters or characters that serve as visible signs of ideas, words, or symbols b: a letter, note, or notice used to communicate or record c: a written composition d: INSCRIPTION e (1): a written or printed paper or document (2): an impression of characters on a substance (as paper)
3: a style or form of composition 4: the occupation of a writer; *esp*: the profession of authorship.

It is clear from this definition that the term "written" is generic, encompassing many forms of transcribing a particular message, and should not be so narrowly construed as to require a holographic transcription.

The framers of the Constitution of Montana, 1972, alluded to the generic application of the term "written" in their debates concerning the adoption of Article V, section 6, *supra*. Specifically, the delegates to the constitutional convention repeatedly made mention of a majority vote of the legislature when referring to the term "written request of a majority of the members." See: Transcript of Proceedings, Montana Constitutional Convention, vol. IV, pages 2507, 2511, 2517, et seq.

In your letter you refer to a "recorded vote" as a method of fulfilling the requirements of a "written request" under the terms of Article V, section 6, *supra*. The term "recorded vote", as used by the legislature, means: A vote transcribed upon a base which records permanently the ayes and nays upon the proposition and which may be preserved in such a manner as to be accessible by the public and which is certified by the appropriate officer as a true and correct transcription of the vote of the members of the legislature. The requisites of a "writing", as defined above, would be found in a recorded vote.

THEREFORE, IT IS MY OPINION:

The legislative assembly may reconvene itself in special session by a recorded vote of the majority of each house voting on the proposal.

Very truly yours,

ROBERT L. WOODAHL
Attorney General