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Opinion No. 99

JUSTICE COURT — Location within county; JUSTICE COURT — When open for transaction of business. Section 93-401 and 93-402, Revised Codes of Montana, 1947.

HELD: The justice of the peace who is located at the county seat cannot close that court one day a week in order to hold justice court in another city.

December 6, 1974

Mr. James A. McCann
Roosevelt County Attorney
P.O. Box 250
Wolf Point, Montana 59201

Dear Mr. McCann:

I am in receipt of your letter in which you request my opinion on the location of justice courts. Your request may be phrased as follows:

Whether the justice of the peace who presides over the justice court located at the county seat can close that court one day a week in order to hold court in another city?

Section 93-401, Revised Codes of Montana, 1947, provides in pertinent part:

(1) There must be at least one (1) justice court in each county of the state. The board of county commissioners of each county of the state shall have authority to constitute one (1) additional justice court in their respective counties as the board deems necessary. One (1) justice court in each county must be located at the county seat and the board of county commissioners shall determine the location of the other justice court in their respective counties...

Section 93-402, R.C.M. 1947, provides:

A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

In the construction of a statute, the intention of the legislature is always to be pursued if possible. Section 93-401-16, R.C.M. 1947. **State ex rel. Krona v. Holms**, 114 M. 372, 136 P.2d 220 (1943). In determining legislative intent, one must first resort to the plain meaning of the words used. **State ex rel Cashmore v. Anderson**, 160 M. 175, 500 P.2d 921 (1972).

Analysing the language of the above provisions, two interpretations are possible. The language could be interpreted to mean that the justice of the peace who is located at the county seat must hold court only at the county seat. Or, it is arguable that it was the intent of the legislature that a justice court must be located at the county seat; however, the justice of the peace could also convene court in another city of the county.

The present language of the above statutory provisions was adopted in the 1974 legislative session. However, the 1973 version of section 93-402, R.C.M. 1947, provided:

A justice's court may be held at any place selected by the justice holding the same, in the county for which he is elected or appointed; and such court is always open for the transaction of business, except on legal holidays and nonjudicial days.

Under the above provision of 1973, it is clear that a justice of the peace could hold court any where in the county. The 1974 provision, however, deleted the underscored portion of the statute. Such a deletion certainly indicates a legislative intent to change the then existing law. The Montana court has ruled that the legislature is presumed to have enacted law with the existing law in mind. **Teamsters, Chauffeurs, Warehousemen and Helpers, Local 45 v. Montana Liquor Control Board**, 155 M. 300, 471 P.2d 541 (1970), and that in adopting amendments to statutes, it is presumed that the legislature intended to make a change in existing law. **Montana Milk Control Board v. Community Creamery Company**, 139 M. 523, 366 P.2d 157 (1961); **Van Tigher v. Luinane**, 136 M. 547, 349 P.2d 569 (1959).

Thus, the change in the statutory language of section 93-402, supra, coupled with the mandatory language of section 93-401, supra, "... One (1) justice court in each county must be located at the county seat", clearly demonstrates the will of the legislature. That is, it was intended by the legislature that a justice court must be located at the county seat and such court must always be open for the transaction of business except on legal holidays and nonjudicial days.

THEREFORE, IT IS MY OPINION:

The justice of the peace who is located at the county seat cannot close that court one day a week in order to hold justice court in another city.

Very truly yours,

ROBERT L. WOODAHL
Attorney General