

VOLUME NO. 36**Opinion No. 72**

ANNEXATION — Prior law repealed; CITIES AND TOWNS — Annexation, prior law repealed; Sections 11-401 through 11-405; Sections 11-501 through 11-513; Sections 11-514 through 11-525; Revised Codes of Montana 1947.

HELD: 1. Section 11-403 was repealed with the passage of the Planned Community Development Act of 1973 and is no longer a proper procedure for annexation.

2. Sections 11-511 through 11-513 remain in effect and provide the procedure for the annexation of government property.

April 14, 1976

Mr. Waldo N. Spangelo
City Attorney of Havre
P.O. Box 1472
Havre, MT 59501

Dear Mr. Spangelo:

You have requested my opinion concerning the following question:

Does the enactment of the Planned Community Development Act of 1973, codified as sections 11-514 through 11-525, preclude a city from following the annexation procedures provided for under section 11-403 or sections 11-511 through 11-513?

Prior to the passage of the Planned Community Development Act of 1973 (hereafter referred to as PCDA) Chapters 4 and 5 of Title 11 provided the only city annexation procedures contained in our codes. Your question asks whether the PCDA repealed prior annexation procedures or is simply an alternative procedure, leaving the cities free to choose the method most suited to their needs. It is my opinion that PCDA repeals prior annexation statutes which are inconsistent with that act.

Your problem arises due to the seemingly inconsistent verbage contained in section 11-525.

In so far as the provisions of this act (PCDA) are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

Since PCDA, to a large extent, deals with subject matter also contained in Chapter 4, Title 11 and sections 11-501 through 11-513, the two sentences in the above quote seem to each dictate interpretations contrary to the other. The first sentence suggests that the prior legislation is repealed while the second sentence suggests that it is not repealed.

The repealing clause contained in section 11-525 was addressed by the court in *State ex rel. Charett v. District Court*, 107 Mont. 489, 494, 86 P.2d 750 (1939).

Courts in general, in speaking of these repealing clauses, have held that they add nothing to the repealing effect of the Act of which they are a part, as without the clause all prior conflicting laws, or parts of laws, would be repealed by implication. **Their chief purpose seems to be to limit the extent of the repeal effected by the Act to those laws, or parts of laws, which are actually inconsistent with the Act.** (Emphasis supplied)

It is my opinion that in adding the second sentence to the phrase in section 11-525, the legislature was merely legislating the above Court's interpretation placed upon the repealing clause as it stands alone. That is, they desired to repeal

only those statutes in Chapters 4 and 5 which covered areas specifically addressed in PCDA. This serves to distinguish their intent here from those instances where entire previous acts are declared repealed because it is determined that the subsequent legislation was meant to be the sole expression of the law in that area.

The fact that PCDA was intended to replace, rather than be an alternative to, previous legislation is clear. First, the legislature did not expressly state that PCDA was an alternative method of annexation as they did in previous annexation legislation. (See section 11-510) Second, the presence of the repealing clause itself in section 11-526 states their intent to repeal prior law rather than legislate an alternative method. Finally, in stating their purpose for passing PCDA in section 11-515, they express their dissatisfaction with previous annexation methods.

The question of precisely which statutes were repealed by PCDA remains. To begin it should be noted that the previous annexation statutes were passed in several legislative sessions rather than together as a comprehensive piece of legislation. The fact that they were passed at various times to accomplish different objectives suggests that the statutes should be viewed individually for purposes of determining whether they have been repealed. Your request relates specifically to section 11-403 and to sections 11-511 through 11-513.

Section 11-403 provides a procedure whereby a city may annex a contiguous parcel of property. This subject is specifically provided for in PCDA (section 11-520) and therefore the prior law must be deemed impliedly repealed.

[w]here a more recent statute conflicts with an earlier one, the conflicting provisions of the earlier statute are repealed. **State v. Langan**, 151 Mont. 558, 564, 445 P.2d 565 (1968).

Sections 11-511 through 11-513 were passed together in 1957 and deal specifically with the annexation of government property. Thus they address a specific type of property not expressly covered in PCDA. Therefore these statutes remain in full force and effect and provide the proper method for annexing such property.

THEREFORE, IT IS MY OPINION:

1. Section 11-403 was repealed with the passage of the Planned Community Development Act of 1973 and is no longer a proper procedure for annexation.
2. Sections 11-511 through 11-513 remain in effect and provide the procedure for the annexation of government property.

Very truly yours,
ROBERT L. WOODAHL
Attorney General