

VOLUME NO. 37

OPINION NO. 20

COUNTIES - Unified city-county government - effect upon composition of existing conservation district which includes county but not city; CITIES - Unified city-county government - effect upon composition of existing conservation district which includes county but not city; CONSERVATION DISTRICTS - Territorial boundries; manner of including additional territory; LOCAL GOVERNMENT UNITS - Unified city-county government - effect upon composition of existing conservation district which includes county but not city. REVISED CODES OF MONTANA, 1947 - Sections 16-5102(2), 16-5103, 16-5115.2, 16-5115.3, 16-5115.10, 76-103, 76-105, 76-106, 76-107, 76-108.

HELD: The geographical territory of the city of Butte was not incorporated into the Mile High Conservation District by approval of a consolidated form of local government for the city of Butte and County of Silver Bow. If the city of Butte is to be included in the conservation district, the appropriate statutory procedure must be followed.

4 May 1977

Nadine D. Scott, Esq.
Criminal Deputy County Attorney
Silver Bow County Courthouse
Butte, Montana 59701

Dear Ms. Scott:

You have requested my opinion concerning the effect of government unification of the city of Butte and the County of Silver Bow upon the Mile High Conservation District. I have stated your question as follows:

Where a Conservation District established pursuant to chapter 1 of Title 76, R.C.M. 1947, encompasses the entire area of a county but excludes one or more cities or towns located therein, does the subsequent government unification of the county and one of the excluded cities intercalate such city into the conservation district?

Your question arises as the result of recent elections held pursuant to provisions of chapter 51 of Title 16, R.C.M.

1947. Under that chapter, a local government study commission was established for each county, incorporated town and incorporated city, section 16-5103, R.C.M. 1947, and authorized to adopt a proposed alternative form of local government, section 16-5115.2, R.C.M. 1947. The alternative form of local government proposed by each study commission was submitted to the local electorate in 1976. Section 16-5115.10, R.C.M. 1947. It is my understanding that voters of the City of Butte and the County of Silver Bow voted on November 2, 1976 to adopt a consolidated city and county local government, as permitted by section 16-5115.3, R.C.M. 1947. Your question is whether or not the approval of the consolidated government makes the city of Butte a part of the Mile High Conservation District.

The Mile High Conservation District was established pursuant to the provisions of chapter 1 of Title 76, R.C.M. 1947, on February 7, 1952. According to official documents on file with the Secretary of State, the district encompasses all of Silver Bow County and that area of Deer Lodge County not already included in a conservation district, excluding all incorporated cities and towns lying within said area. The district was originally named "Mile High Soil Conservation District," thereafter changed on February 14, 1962, to "Mile High Soil & Water Conservation District," and assumed its present name, "Mile High Conservation District," on August 25, 1971.

Conservation districts are units of government created by the express provisions of chapter 1 of Title 76: They are separate and distinct from any city, town or county and, as in the case of the Mile High Conservation District, may overlap county boundaries. Section 76-103, R.C.M. 1947, defines "conservation district" as follows:

(1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

Section 76-105, R.C.M. 1947, similarly states, "The district is a government subdivision of this state and a public body corporate and politic***." The distinct status of conservation districts is further confirmed by statutory provision for a governing body, sections 76-105(7), 76-106 and 76-107, R.C.M. 1947, which independently exercises numerous, delega-

ted governmental powers, including the power to levy taxes, section 76-108, R.C.M. 1947.

The manner for establishing territorial boundaries of a conservation district is specifically prescribed by section 76-105, R.C.M. 1947. A proposed district, including its proposed boundaries, is initially subject to the approval of voters residing within the proposed district. Section 76-105(4), R.C.M. 1947. A majority vote for the proposed district is a prerequisite to its creation. Section 76-105(6), R.C.M. 1947. Similarly, statutory provision is made for the manner in which territorial additions may be made to an existing district. Section 76-105(11), R.C.M. 1947, provides:

(11) Petitions for including additional territory within an existing district may be filed with the department, and the proceedings herein provided for in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion are less than ten (10), the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

Where the mode and manner of executing the provisions of a statute are explicitly prescribed, that mode and manner is mandatory and must be followed. See Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947); Smith v. City of Bozeman, 144 Mont. 528, 541, 398 P.2d 462 (1965). Unless the statutory provisions for adoption of an alternative form of local government, chapter 51 of Title 16, repeal the requirements for territorial additions as set forth in section 76-105(11), those requirements must be satisfied before Butte can be included in the Mile High Conservation District.

Chapter 51 of Title 16 does not expressly repeal any statutory provision relating to conservation districts, nor does it make any reference to conservation districts. The

chapter is exclusively concerned with units of local government which are defined as, and limited to, counties, incorporated cities and incorporated towns. Section 16-5102(2), R.C.M. 1947. Repeal of a statute by implication is disfavored. State v. Winter, 129 Mont. 207, 220, 285 P.2d 149 (1955). Since there is no conflict between the provisions of chapter 51 of Title 16 and those of chapter 1 of Title 76, and since each chapter concerns different governmental units or entities, it is my opinion that the requirements of section 76-105(11) are valid and effective.

THEREFORE, IT IS MY OPINION:

The geographical territory of the city of Butte was not incorporated into the Mile High Conservation District by approval of a consolidated form of local government for the city of Butte and County of Silver Bow. If the city of Butte is to be included in the conservation district the appropriate statutory procedure must be followed.

Very truly yours,

MIKE GREELY
Attorney General