

VOLUME NO. 38

OPINION NO. 28

COUNTY OFFICERS AND EMPLOYEES - Terms of city-county planning board members;

LAND USE - Terms of city-county planning board members;  
MUNICIPAL CORPORATIONS - Terms of city-county planning board members;

STATUTES - When retroactive;

MONTANA CODE ANNOTATED - Sections 1-2-109, 76-1-101, 76-1-201, 76-1-203;

REVISED CODES OF MONTANA, 1947 - Sections 11-3801, 11-3810(1)(a), 11-3810(3), 12-201.

HELD: Amended residence requirements of section 76-1-201, MCA (section 11-3810(1)(a), R.C.M. 1947), apply to appointments of new members of city-county planning boards which are made on or after July 1, 1979. City-county planning board members appointed prior to July 1, 1979, remain qualified to serve out the terms of their appointment.

13 July 1979

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Gentlemen:

You have requested my opinion on the following question:

Do the residence requirements of section 76-1-201, MCA, as amended by House Bill No. 391, apply retroactively to disqualify previously appointed members of a city-county planning board?

The Legislature has authorized cities, towns and counties to organize planning boards in order to promote orderly development of their governmental units and environs. § 76-1-101, MCA (§ 11-3801, R.C.M. 1947).

Once a city-county planning board has been established pursuant to the provisions of Title 76, chapter 1, part 1, MCA, a nine-member board must be appointed as provided in section 76-1-201, MCA (section 11-3810(1)(a), R.C.M. 1947).

Prior to July 1, 1979, this section required (1) "two official members who reside outside the city limits to be appointed by the board of county commissioners...." House Bill No. 391, enacted by the 1979 Legislature amended this subsection, effective July 1, 1979, to provide for "two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners...." Your question concerns the application of this amendment, specifically whether planning board members appointed prior to July 1, 1979, must meet the new residence requirement or lose their seats on the board.

Unquestionably, the Legislature may impose reasonable restrictions on public office holders. For example, the Arizona Supreme Court has said:

First, it must be recognized that the right to vote and the right to be a candidate for and hold office are separate matters, and the state may require that a citizen meet more strict requirements to hold office than he does to vote for those offices.

Triano v. Massion, 513 P.2d 935, 937 (1973).

However, it is my opinion that the general rule against retroactive applications of newly enacted statutes precludes any application of the new residency requirement to previously appointed members of a planning board who are currently serving out the remainder of their terms of appointment. The general rule against retroactive application is set out in section 1-2-109, MCA (section 12-201, R.C.M. 1947), which provides, "No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared."

A retroactive application is defined in Butte and Superior Mining Co. v. McIntyre, 71 Mont. 254, 263, 229 P. 730 (1924):

A statute which takes away or impairs vested rights acquired under existing laws or attaches a new disability, in respect to transactions already past...is deemed retroactive.

Qualifications for an appointive office are determined at the time of appointment, Chappelle v. Greater Baton Rouge

District, 329 So.2d 810 (La. App. 1976), and at the time of their appointments current members of planning boards presumably met the residence requirements then required by section 76-1-203, MCA (section 11-3810(3), R.C.M. 1947). Under section 76-1-203, MCA, their appointments were for specific terms. Thus, an application of the amended residence requirements to current board members whose terms extend beyond July 1, 1979, would take away the affected board members' right to serve out their statutorily specified terms. Such application would amount to a retroactive application of law. Since the Legislature did not expressly provide for such retroactivity, the terms of House Bill No. 391 have only prospective application to planning board appointments made on or after July 1, 1979.

THEREFORE, IT IS MY OPINION:

Amended residence requirements of section 76-1-201, MCA (section 11-3810(1)(a), R.C.M. 1947), apply to appointments of new members of city-county planning boards which are made on or after July 1, 1979. City-county planning board members appointed prior to July 1, 1979, remain qualified to serve out the terms of their appointment.

Very truly yours,

MIKE GREELY  
Attorney General