

VOLUME NO. 38

OPINION NO. 47

COUNTIES - Water and sewer districts;
WATER AND SEWER DISTRICTS - Requirements to initiate a district;
WATER AND SEWER DISTRICTS - Elections, meaning of term "registered voter";
WATER AND SEWER DISTRICTS - Non-resident, corporate property owner as registered voter;
MONTANA CODE ANNOTATED - Sections 7-13-2201 through 7-13-2255.

HELD: A water and sewer district may be initiated by a petition signed by all of the non-resident, corporate property owners within the district where there are no other registered voters in the proposed district.

30 October 1979

James E. Seykora, Esq.
Big Horn County Attorney
Big Horn County Courthouse
Hardin, Montana 59034

Dear Mr. Seykora:

You have asked for my opinion concerning:

Whether a petition to create a water and sewer district, signed by all of the owners of property within the proposed district, is sufficient to begin the process of creating a county water and sewer district pursuant to sections 7-13-2201 through 7-13-2348, MCA, even if none of the owners of property reside within the boundaries of the proposed county water and sewer district.

You have advised my office that a petition has been filed in Big Horn County for the creation of a water and sewer district. There are no registered voters within the proposed boundaries of the district, and the land that is encompassed within the boundaries is totally held by corporate interests.

To initiate a water and sewer district a petition must be filed with the Board of County Commissioners in the county in which the proposed district is located, signed by at least ten percent of the registered voters of the territory included in the proposed district. § 7-13-2204(1), MCA. Upon filing of the petition, the county commissioners are required to set the matter for hearing, § 7-13-2205, MCA, at which point the commissioners determine whether the petition complies with the requirements of law. § 7-13-2206, MCA. Following the hearing, and upon final determination of the boundaries of the district, the Board of County Commissioners must give notice of an election to be held in the proposed district for the purpose of determining whether the district shall be incorporated. § 7-13-2208, MCA. If at least forty percent of all registered voters residing in the proposed district vote, and the majority of the votes cast favor the incorporation of the district, the county commissioners shall declare the territory duly organized as a county water and sewer district, and cause to be filed with

the Secretary of State a certificate stating that the proposition was adopted. § 7-13-2214, MCA.

These statutory procedures do not specifically provide for establishing a water and sewer district when there are no registered voters in the territory encompassing the proposed district. Nevertheless, it is my opinion that a water and sewer district may be initiated by a petition signed by all of the owners of the property within the proposed district, whether those owners are natural or corporate persons.

Initially, it is clear that the Legislature contemplated the participation of corporate property owners as voters in elections regarding creation of water and sewer districts. Section 7-13-2212, MCA, provides:

Qualification to vote on question of creating a district. (1) Except as provided in subsection (2), no individual shall be entitled to vote at any election under the provisions of this part, and part 23, unless such individual possess all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of such real property need not possess the qualifications required of an elector in 13-1-111(1)(c) provided that such elector is qualified if he is registered to vote in any state of the United States and files proof of such registration with the election administrator.

Although this provision seems to limit voter participation to "individuals," *i.e.*, natural persons, it is my opinion that such a construction is unwarranted. The term "individual" was substituted for the broader term "person" by the 1979 legislative assembly. However, the Legislature left intact two statutory provisions which clearly permit voter participation by corporate entities. Section 7-13-2254, MCA, provides:

Where a corporation owns real property within the boundaries of the district, the president, vice president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

This provision appears among the statutory provisions relating to election of officers, as opposed to elections for the creation of the district. However, section 7-13-2215, MCA, allows the county commissioners to combine the election creating the district with the election of officers. Clearly, a voter qualified to vote in one portion of such a consolidated election would be qualified in the other. By leaving these provisions for corporate voting intact, the Legislature excluded a construction of the term "individual" which would prohibit corporate property-owners from voting.

The next question raised by your inquiry is that of residency. Again, the codes provide an explicit answer. § 7-13-2255, MCA, states:

Provision for vote by a non-resident property owner. An elector owning real property within the district need not reside within the district in order to vote.

It is a fundamental rule of construction that statutes must be read and considered in their entirety. Legislative intent may not be gained from the wording of any particular sentence or section, but only from a consideration of the whole. Teamsters Local 45 v. Cascade County School District, 162 Mont. 277, 511 P.2d 339 (1973); State Board of Equalization v. Cole, 122 Mont. 9, 195 P.2d 989 (1948). It is clear that by allowing those elections to be combined, it was the intent of the Legislature to allow non-resident, corporate property owners to participate in the entire election process.

The logical extension of this reasoning would allow the creation of water and sewer districts upon petition by all of the non-resident corporate owners. A petition to create such a district must be signed by at least ten percent of the registered voters of the territory included in such proposed district. § 7-13-2204, MCA. The above discussion demonstrates that a non-resident corporate property owner is

a "registered voter" in the district for water and sewer district election purposes. A petition reflecting the endorsement of all such "registered voters" is clearly sufficient. A holding to the contrary, particularly in this case, would lead to an inequitable result and defeat the purpose of the above provisions. A statute should not be interpreted to defeat its evident purpose since the objects sought to be achieved by legislation must be given prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

The purpose of creating a water and sewer district is to allow for water and sewer facilities to benefit the property within the district. It is, after all, those owners of the real property that bear the tax burden needed to create the district. Those people or corporations should be entitled to participate in the process. This is particularly true where, as you advised, the petition to create the district was signed by all of the owners of the property within the proposed district.

THEREFORE, IT IS MY OPINION:

A water and sewer district may be initiated by a petition signed by all of the non-resident, corporate property owners within the district where there are no other registered voters in the proposed district.

Very truly yours,

MIKE GREELY
Attorney General