

VOLUME NO. 38

OPINION NO. 74

ELECTIONS - Political subdivisions, revised dates of election of officers;

ELECTIONS - Political subdivisions, length of terms of present officers;

CONSERVATIONS DISTRICTS - Election of supervisors, date;

WATER AND SEWER DISTRICTS - Election of directors, date;

HOSPITAL DISTRICTS - Election of trustees, date;

FIRE DISTRICTS - Election of trustees, date;

DRAINAGE DISTRICTS - Election of commissioners, date;

IRRIGATION DISTRICTS - Election of commissioners, date.

REVISED CODES OF MONTANA - 7-13-2234, 7-13-2236, 7-33-2106, 7-34-2117, 13-1-104, 76-15-304, 85-7-1702, 85-8-302, 13-1-104.

1979 MONTANA LAWS - Chapter 571.

- HELD: 1. Officers of hospital, fire, irrigation and drainage districts whose terms were due to expire in the spring of 1980 are entitled to remain in office until their successors are properly qualified following an election held in November, 1980.
2. Officers of water or sewer districts whose terms were due to expire in 1980 are entitled to remain in office until their successors are properly qualified following the election to be held in November, 1981.
3. Officers of conservation districts shall be elected at the general election held in November of even numbered years.

7 April 1980

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion regarding the procedures that should be followed for the election of officers in political subdivisions throughout the state. Chapter 571, 1979 Montana Laws, was a massive revision of the election laws in the State of Montana. One of the major changes was an elimination of elections that were previously held in the spring. All elections must now be held in November except school elections and primary elections which are held in June of even numbered years, and if necessary in September of odd numbered years. Section 13-1-104, MCA, now provides:

Times For Holding General Elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held with the general election provided for in subsections (1) and (2). If a primary election is necessary, it shall be held at the same time as the primary provided for the regular general election for that year.

Hospital, fire, irrigation, and drainage districts all elect officers each year. The terms are staggered so that all of the officers do not run for election each year, and each officer serves a three year term.

Prior to the enactment of chapter 571, each of the above districts held an election every spring. Chapter 571 changed that procedure. Section 7-34-2117, MCA, was amended to require trustees of hospital districts to be elected pursuant to the provisions of Title 13. Section 7-33-2106, MCA, now requires that fire district trustees be elected pursuant to the provisions of section 13-1-104(3), MCA. Section 85-8-302, MCA, was amended to require elections for drainage district commissioners to be held pursuant to 13-1-104 MCA, and section 85-7-1702, MCA, was amended to require the same procedure for the election of irrigation district commissioners.

Section 13-1-104, MCA, provides that all of these elections are to be held at the general election in November of each year. The question that has arisen is what happens to the terms of the officers that would have expired this spring, pursuant to the old statutory scheme?

Section 404 of chapter 571, 1979 Montana Laws, provided a transition schedule to be followed because of the change in election dates. That section provided:

(1) Elected officials holding offices to be elected in odd-numbered years and holding office on the date this law becomes effective shall continue in office and in the performance of their duties until the next election as specified in 13-1-104 and subsection (2) and (3) of this section.

(2) Elections required by 13-1-104 for odd-numbered years shall be held beginning in 1979.

(3) Elections required by 13-1-104 for even-numbered years shall be held beginning in 1980.

(4) Notwithstanding any other provision of state law, all elected officers holding office on the date this law becomes effective shall hold their respective offices until new successors are elected and qualified.

The intent of the Legislature was that the present officers hold office until their successors are elected and properly qualified to assume the responsibilities of the office. In districts, such as those listed above, which hold annual elections the holdover period for the current officers is only a few months. Officers of hospital, fire, irrigation and drainage districts whose terms were originally due to expire in the spring of 1980, are entitled to remain in office until successors are elected in November of 1980 and properly qualified to assume office on the date the new term of office commences.

A similar question exists regarding the election of directors for utility districts, such as a water or sewer district. These directors are elected to four year terms. Under prior law the directors of utility districts were elected every fourth year in March. The election could have been held in either an odd or even numbered year, depending upon the date the district was originally organized. As amended by chapter 571, section 7-13-2236, MCA, provides:

General District Election. The election of directors of the district shall be held every 4 years with the election for local government officials provided for in 13-1-104(2)."

Section 13-1-104(2), MCA, requires the election to be held in November of every odd numbered year. By virtue of those provisions there will not be an election of officers in these districts in 1980. The next election for directors of water and sewer districts will not be held until 1981.

Your question is what happens to those directors whose terms were due to expire in 1980? The intent of the Legislature can be ascertained from the language of the statutes. Section 7-13-2234(1), MCA, a statute that refers specifically to water and sewer district directors, provides:

All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

The transition schedule in section 404, chapter 571, 1979 Montana Laws, also applies:

(4) Notwithstanding any other provision of state law, all elected officers holding office on the

date this law becomes effective shall hold their respective offices until new successors are elected and qualified.

It was the intent of the Legislature that those individuals presently serving as officers in water and sewer districts and whose terms were due to expire in 1980, could retain their office until their successors are elected in 1981, and properly qualified to assume office.

The final question is whether the elections for officers in conservation districts should be in even or odd numbered year. It is my opinion that they should be held in even numbered years. Conservation district supervisors are elected to a term of four years under the provisions of section 76-15-312, MCA. Section 76-15-303, MCA, provides that the elections for supervisors in conservation districts are to be held at the general election. Under the provisions of section 13-1-104, MCA, general elections are to be held in November of each year.

Section 76-15-304(1), MCA, provides:

Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, the district shall alternatively elect three and two supervisors at succeeding general elections.

That section was amended in 1977 to provide that the supervisors be elected during general elections, which at the time were elections held for federal officers and state-wide offices in the even-numbered years. To facilitate the transition to holding elections in even-numbered years instead of the annual meeting, as was the practice prior to 1977, all five supervisor positions were placed on the ballot in 1978. Three supervisors were elected to four year terms to expire in 1982 and two supervisors were elected to two year terms to expire in 1980. That procedure was uniformly adopted throughout the state.

Section 13-1-104(2), MCA, provides that elections for officers of political subdivisions wholly within one county shall be held in odd numbered years. Section 13-1-104(1), MCA, provides that elections for multi-county district officers are to be held in even numbered years. Conserva-

tion districts, by law, may be multi-county districts. See part 5, chapter 15, Title 76, MCA.

THEREFORE, IT IS MY OPINION:

1. Officers of hospital, fire, irrigation and drainage districts whose terms were due to expire in the spring of 1980 are entitled to remain in office until their successors are properly qualified following an election held in November, 1980.
2. Officers of water or sewer districts whose terms were due to expire in 1980 are entitled to remain in office until their successors are properly qualified following the election to be held in November, 1981.
3. Officers of conservation districts shall be elected at the general election held in November of even numbered years.

Very truly yours,

MIKE GREELY
Attorney General