

VOLUME NO. 38

OPINION NO. 89

LOCAL GOVERNMENT - Statutes to be used in abandonment of the commission-manager form;
MUNICIPAL GOVERNMENT - Statutes to be used in abandonment of the commission-manager form;
MONTANA CODE ANNOTATED - Sections 7-3-121 to 7-3-161, 7-3-4334.

HELD: The provisions of section 7-3-4334, MCA, must be followed when a local government unit abandons the commission-manager form of government.

15 July 1980

W. Gene Theroux, Esq.
Poplar City Attorney
P.O. Box 998
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Dear Mr. Theroux:

You have requested my opinion on the following question:

What statutes must be followed to abandon a commission-manager form of local government?

The procedure for abandonment of the commission-manager form is specifically provided for in section 7-3-4334, MCA, entitled, "Procedure To Abandon Commission-Manager Form of Government." However, a new law was adopted by the Forty-Sixth Legislative session as 1979 Montana Laws, chapter 675, and codified as sections 7-3-121 through 7-3-161, MCA. The new statute contains general provisions for altering all forms of local government.

It is a fundamental principal of statutory construction that where one statute deals with the subject in general and comprehensive terms, and another section deals with a part of the same subject in a more specific and definite manner, the specific will control. Barth v. Ely, 85 Mont. 310, 278 P. 1002 (1929); Denning v. Missoula City-County Local Government Study Commission, 34 St. Rptr. 802 (1977). This rule of construction is also set out in the Montana Codes in section 1-2-102, MCA, which provides in pertinent part:

When a general and particular provision is inconsistent, the latter is paramount to the former, so

a particular intent will control a general one that is inconsistent with it.

In State ex rel. State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 417, 194 P.2d 633 (1948), it was stated:

It is also a fundamental canon of statutory construction that a latter statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute.

Chapter 675 did not repeal section 7-3-4334, MCA. As section 7-3-4334, MCA, specifically applies to abandoning the commission-manager form of government it must be followed in this instance.

THEREFORE, IT IS MY OPINION:

The provisions of section 7-3-4334, MCA, must be followed when a local government unit abandons the commission-manager form of government.

Very truly yours,

MIKE GREELY
Attorney General