

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 12

ANNEXATION - County water and/or sewer districts;
COUNTY WATER AND/OR SEWER DISTRICTS - Addition of land;
ELECTIONS - Addition of land to a county water and/or
sewer district;

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SEWERS - Addition of land to a county water and/or sewer district;

WATER AND WATERWAYS - Addition of land to a county water and/or sewer district;

MONTANA CODE ANNOTATED - Sections 7-13-2214, 7-13-2341;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 161 at 663 (1978); 38 Op. Att'y Gen. No. 47 (1979).

HELD: An ordinance for the addition of land to a county water and/or sewer district is adopted if:

(1) at least 40% of all registered voters residing within the proposed boundaries of the district have voted, and

(2) a majority of the votes cast in each municipal corporation or part of a municipal corporation within the proposed boundaries are in favor of adoption, and

(3) a majority of the votes cast in the unincorporated territory of each county within the proposed boundaries are in favor of adoption.

13 April 1981

Ted O. Lympus, Esq.
Flathead County Attorney
Flathead County Courthouse
Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion on a question which I have stated as follows:

In order for an ordinance for the addition of land to a county water and/or sewer district to be adopted, are favorable votes required both of a majority of the electors in the proposed addition and of a majority of the electors in the district, or is a majority of the electors in both areas combined sufficient?

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Section 7-13-2341, MCA, provides for the addition of land to an already organized county water and/or sewer district. It states:

(1) Any portion of any county, and municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, within 70 days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

It is a fundamental rule of statutory construction that statutes are to be read and considered in their entirety. See, e.g., McClanathan v. Smith, ___ Mont. ___, 606 P.2d 507, 510 (1980); 38 Op. Att'y Gen. No. 47 at 3 (1979). While the statute specifies that the

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ordinance must be submitted to electors in both the district and the proposed addition, it does not specify what election results are necessary to constitute adoption of the ordinance. However, subsection (1) states that a petition for addition of land is to be presented in the same manner as a petition for the initial organization of a district. Subsection (2) again refers to provisions elsewhere in the county water and/or sewer district laws for the holding of an election. Reading the statute as a whole, therefore, I find that the results of an election to add land are to be determined in the same manner as the results of an election for the initial organization of a district.

If the organization of a district were to require simple majority approval, then the answer to your question would be that a majority of the electors in both the district and proposed addition combined would be sufficient for the adoption of an ordinance to add land. However, section 7-13-2214, MCA, provides that the organization of a district is approved:

[I]f at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district,...

It is well established that a statute should be construed so that no part of it is rendered meaningless. See Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484 (1950). If simple majority approval were the only requirement, the phrase "in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district" would be surplusage. I conclude, therefore, that section 7-13-2214, MCA, requires that the votes in each municipality be tallied separately from the votes in the unincorporated area, and that majority approval be obtained in each. See 37 Op. Att'y Gen. No. 161 at 663, 669 (1978).

The plain intent of the Legislature in establishing this requirement was to prevent any municipal area or any rural area from dominating a county water or sewer

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district. As applied to the initial organization of a district, the requirement prevents the inclusion of any municipal area or any rural area against its will. Cf. Tex. Water Code Ann. § 51.035 (Vernon) (providing that no municipality may be included in a district unless the organization of the district is approved by a majority of the voters in the municipality, and that no lands outside of a municipality may be included in a district unless the organization of the district is approved independent of the vote in the municipality); see generally Shaddix v. Kendrick, 419 S.W.2d 908, 910 (Tex. Ct. App. 1967), rev'd on other grounds, 430 S.W.2d 461 (Tex. 1968). As applied to the addition of land to an already existing district, the requirement tends to equalize the input of municipalities and unincorporated areas into the decision to add land.

THEREFORE, IT IS MY OPINION:

An ordinance for the addition of land to a county water and/or sewer district is adopted if:

- (1) at least 40% of all registered voters residing within the proposed boundaries of the district have voted, and
- (2) a majority of the votes cast in each municipal corporation or part of a municipal corporation within the proposed boundaries are in favor of adoption, and
- (3) a majority of the votes cast in the unincorporated territory of each county within the proposed boundaries are in favor of adoption.

Very truly yours,

MIKE GREELY
Attorney General