

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 77

COUNTY COMMISSIONERS - Proceedings, duty to publish;
MONTANA CODE ANNOTATED - Section 7-5-2123;
OPINIONS OF THE ATTORNEY GENERAL - 13 Op. Att'y Gen. at
42 (1929); 18 Op. Att'y Gen. at 28 (1939); 22 Op. Att'y
Gen. at 210 (1948).

HELD: Section 7-5-2123, MCA, requires a board of
county commissioners, at the adjournment of
each session of the Board, to publish in a
newspaper a complete list of all claims
ordered paid and a fair summary of its
proceedings.

OPINIONS OF THE ATTORNEY GENERAL

17 December 1982

Charles A. Graveley, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59623

Dear Mr. Graveley:

You have requested my opinion concerning whether the Board of County Commissioners of Lewis and Clark County has a duty to publish in a newspaper a list of its claims and a summary of its proceedings. The applicable statutory provision is section 7-5-2123, MCA, which states:

(1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annually, the county clerk's annual statement of the financial condition of the county.

(2) Publication of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

You suggest that the language of the statute is directory rather than mandatory, leaving the publication decision within the discretion of the board of county commissioners.

OPINIONS OF THE ATTORNEY GENERAL

Under Montana law the question of whether a statute is directory or mandatory depends upon the intention of the Legislature, to be ascertained from a consideration of the object of the statute and the consequences that would result from continuing it one way or the other. See Hansen v. City of Havre, 112 Mont. 207, 217, 114 P.2d 1053, 1059 (1941); and Miller v. Aetna Life Ins. Co., 101 Mont. 212, 221, 53 P.2d 704, 708 (1936). See also Sutherland, Statutory Construction § 25.03 (1972). The Legislature enacted the predecessor of section 7-5-2123, MCA, in 1921 (§ 4465.21, R.C.M. 1921), giving a board of county commissioners the jurisdiction and power to publish in a newspaper, or otherwise, a statement of its proceedings and an annual financial statement. In 1927, the Legislature amended section 4465.21, R.C.M. 1921, to include the power to publish a list of claims plus a provision concerning the time frame for publication, i.e., within 21 days after a session's adjournment for the summary of proceedings and within 30 days after presentation to the board for the annual financial statement. The 1927 amendment is identical in substance to the currently existing statute, section 7-5-2123, MCA.

On several occasions since the 1927 amendment was enacted, the Office of the Attorney General has answered the question of whether a board of county commissioners must publish in a newspaper a summary of its proceedings. These opinions, with which I concur, appear in Opinions of the Attorney General, volumes 13 at 42 (1929), 18 at 28 (1939), and 22 at 210 (1948), and conclude that the Legislature intended to make mandatory such publication. In the 1939 and 1948 opinions, the Attorney General noted that the Legislature had met on numerous occasions since the issuance of the 1929 opinion, and had not seen fit to change the statutory language so as to make discretionary the publication of the commissioners' proceedings. The 1948 opinion mentioned that the rationale for the publication requirement was that the taxpayers of the county are entitled to know, by such publication, how, to whom, and for what their tax money is being spent. The opinion noted that the public policy that generally applies in Montana is to give broad public exposure to matters pertaining to the expenditure of public money. See Adoption of Bascom, 126 Mont. 129, 136, 246 P.2d 223, 226 (1952), for the proposition that where the public

OPINIONS OF THE ATTORNEY GENERAL

has an interest in the exercise of a power conferred by statute, the exercise is mandatory.

You note that the Board of County Commissioners of Lewis and Clark County intends to publish in a newspaper a notice that the Board's records are available for public inspection. Such action would not seem to comport with the language of section 7-5-2123, MCA. See Fletcher v. Paige, 124 Mont. 114, 118, 220 P.2d 484, 486 (1950), wherein the Supreme Court held that a statute which directs that a thing be done in a certain manner ordinarily implies that it shall not be done in any other manner. Moreover, the Board's contention that its decision not to publish its claims and summary of its proceedings would save a substantial amount of money is not a justification for failure to publish. See Dale v. First National Bank of Rushmore, 178 Minn. 484, 227 N.W. 499 (1929).

Finally, it is noteworthy that in 1974 the District Court for the Fifth Judicial District (Madison County) ordered the Madison County Board of County Commissioners to publish in a newspaper its claims and proceedings in the form and substance set forth in section 7-5-2123, MCA (codified at that time as section 16-2023, R.C.M. 1947). Madison County v. Tichenor, No. 6296.

THEREFORE, IT IS MY OPINION:

Section 7-5-2123, MCA, requires a board of county commissioners, at the adjournment of each session of the board, to publish in a newspaper a complete list of all claims ordered paid and a fair summary of its proceedings.

Very truly yours,

MIKE GREELY
Attorney General