

ELECTIONS - Election of state senators, length of term of office after reapportionment;  
LEGISLATURE - Length of term of office of state senators after reapportionment;  
REAPPORTIONMENT - Length of term of office of state senators after reapportionment;  
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 1 (1983);  
MONTANA CONSTITUTION - Article V, sections 3, 14.

HELD: The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

21 January 1983

Senator Stan Stephens  
Office of the President  
Montana State Senate  
P.O. Box 156, Capitol Station  
Helena MT 59620

Dear Senator Stephens:

You have requested my opinion as to whether the terms of office of members of the Montana State Senate who were elected in 1982 must be shortened as a result of reapportionment and redistricting.

As you noted in your request, I recently issued an opinion concerning a similar inquiry having to do with the terms of office of Missoula aldermen. See 40 Op. Att'y Gen. No. 1 (1983). That opinion concluded that aldermen elected to four-year terms in 1981 did not need to run for reelection in 1983 as a result of reapportionment and redistricting. The conclusion was based on the fact that Montana state law provided for four-year terms for aldermen, without establishing any procedure for shortening the terms after reapportionment. No Montana Supreme Court decision has been rendered on this issue, so research of the law in other states was necessary. This research disclosed a

number of court decisions in jurisdictions where similar questions had arisen. Those decisions hold that unless there is a constitutional or statutory provision authorizing shortened terms, an elected official whose term runs beyond the reapportionment year may be held over for the duration of the term for which he or she was elected without resulting in a violation of the notions of equal protection and representative government. I refer you to the cases cited in the Missoula aldermen opinion.

With respect to the terms of state senators, the Montana Constitution, Mont. Const. art. V, § 3 provides for four-year terms on a staggered basis. The 1972 Constitution's Transition Schedule contained a procedure for all senate terms to end on December 31, 1974, and for the state senators subsequently elected to draw lots to establish a term of two years for one-half of their number. This provision specifically applied to the first election of state legislators to take place after the reapportionment plan became effective in February, 1974, and was necessary to implement the 1972 Constitution's new requirement of staggered terms for state senators. That section of the Transition Schedule was to be removed from the Constitution as soon as it had been executed. The provisions of section 5, Terms of Legislators, were executed and certified by a letter from the Attorney General to the Secretary of State on March 24, 1977.

The transcripts of the 1972 Constitutional Convention include a brief discussion by delegates as to whether terms of state senators should be shortened upon reapportionment. See March 7, 1972, transcript at 1568-69. The discussion is inconclusive with one delegate suggesting that if the terms were to be shortened the convention should specifically address that issue, and another delegate noting that the courts would deal with the problem. Even if the transcripts were clear as to the constitutional delegates' intent, the courts would not consider them unless there is some ambiguity in the language of the Constitution. See Sutherland, Statutes and Statutory Construction (1973) at § 46.04. The language of article V, section 3 of the Montana Constitution is clear. State senators shall be elected for a term of four years. The Montana Constitution and Montana statutes provide no authority for changing those terms after reapportionment. The

terms of those members of the state senate who were elected in 1982 do not expire until 1986.

The reapportionment plan is the responsibility of the Montana Districting and Apportionment Commission. The Commission has the inherent authority under the Montana Constitution, article V, section 14 to do what is necessary to implement a plan that complies with the State's laws. See Cargo v. Paulus, 635 P.2d 367 (1981). This means that the Commission must not only redraw district boundaries, but also designate the election dates for the new districts. Various states have handled the details of reapportionment differently with respect to how holdover senators fit into the reapportionment plan. In Montana, these details are the responsibility of the Districting and Apportionment Commission.

THEREFORE, IT IS MY OPINION:

The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

Very truly yours,

MIKE GREELY  
Attorney General