

VOLUME NO. 40

OPINION NO. 30

COUNTIES - Local government study commission;
LOCAL GOVERNMENT - Study commission to conduct local
government review;
MONTANA CODE ANNOTATED - Sections 7-3-103, 7-3-103(2),
7-3-171 to 7-3-193, 7-3-173, 7-3-176;
MONTANA CONSTITUTION - Article XI, section 9(2).

HELD: The question of conducting local government
review and establishing a study commission
must appear on the June 1984 primary election
ballot pursuant to section 7-3-173(2), MCA,
notwithstanding any recommendations made by
the study committee now reviewing Lewis and
Clark County government, or placement on the
ballot thereof.

16 January 1984

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You have asked my opinion concerning the required procedures for voting on the question of whether to conduct local government review in Lewis and Clark County. Your specific questions are:

1. If the study committee now reviewing Lewis and Clark County government recommends no change in the form of government, must the question of conducting a local government review and establishing a study commission appear on the June 1984 primary election ballot for Lewis and Clark County?
2. If the study committee now reviewing Lewis and Clark County government recommends an alternative form of government and secures sufficient petition signatures to place the question of adopting the alternative form on an election ballot prior to June 1984 (for example, on the school election ballot in April 1984), must the question of conducting a local government review and establishing a study commission appear on the June 1984 primary election ballot for Lewis and Clark County?
3. If the study committee recommends an alternative form and secures sufficient petition signatures to place the question of adopting the alternative form on the June 1984 primary election ballot, must the question of conducting a local government review and establishing a study commission also appear on the June 1984 primary election ballot for Lewis and Clark County?

Article XI, section 9(2) of the Montana Constitution provides that the Legislature shall require local

elections every ten years to determine whether each local government will undertake a review of its structure. If the review is approved by a majority of voters, a local government study commission shall be elected at a subsequent election.

The statutes that establish the mechanism for carrying out the mandate of article XI, section 9(2) of the Montana Constitution were enacted in 1983 and are found at sections 7-3-171 to 193, MCA. Local government study commissions are authorized in section 7-3-173, MCA, which provides:

Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission shall be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) in 1984 and thereafter whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission:

(a) in 1984 to implement the provisions of Article XI, section 9(2), of the Montana constitution as provided in section 2, Chapter 70, Laws of 1977;

(b) within 1 year after the 10-year period referred to in subsection (1)(c).

Subsection (1) permits the voters to call for government review and the establishment of a study commission at any time. Subsection (2) mandates that the question of conducting a local government review and establishing a study commission be submitted to the voters in 1984. Section 7-3-176, MCA, provides the procedure for filling the positions on the study commission at a subsequent election, if the question of government review is approved.

In Lewis and Clark County, a local government study committee was appointed by the Board of County Commissioners before the 1983 legislation was enacted. The committee was set up under previously-enacted legislation that provides procedures by which voters may consider an alternative form of local government. See § 7-3-103, MCA. Should this committee recommend a change in the existing form of government, the final proposal will be circulated to voters and will qualify to be placed on the ballot if 15% of the electors sign the petition, pursuant to section 7-3-103(2), MCA. It is possible that the committee's proposal will qualify as a ballot measure in 1984, either prior to or on the date of the primary election. Your questions concern the effect of such an election on the recently-enacted requirement that the question of conducting local government review and establishing a study commission be voted on in 1984. § 7-3-173, MCA.

Although some study committees were appointed for the purpose of reviewing local government structure and submitting proposed changes to the voters under section 7-3-103, MCA, these committees should not be confused with the local government study commissions referred to in the 1983 legislation. The new statutes, and in particular section 7-3-173, MCA, provide for elected study commissions as required by article XI, section 9(2) of the Montana Constitution. A study committee appointed by the local governing body, such as the one currently reviewing Lewis and Clark County government, does not fit this description. Nor does the newly-enacted section 7-3-173(2), MCA, permit any exceptions to the requirement that an election be held in 1984 on the question of whether to undertake local government review and establish a study commission.

The 1983 minutes of the House and Senate Committees on Local Government do not include discussions on the

effect that ongoing study committees might have on the new legislation (House Bill 426, enacted as 1983 Mont. Laws, ch. 697). The legislative committees approved a statute that requires voters in 1984 to determine for themselves whether they wish to elect a study commission to review their local governments. The fundamental rule of all statutory construction is that the intention of the Legislature controls. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 1324, 632 P.2d 707, 710 (1981).

In light of the foregoing discussion, I conclude that the existence of the Lewis and Clark County study committee and the placing on the ballot of any of its recommendations would not affect the requirements of section 7-3-173, MCA.

THEREFORE, IT IS MY OPINION:

The question of conducting local government review and establishing a study commission must appear on the June 1984 primary election ballot pursuant to section 7-3-173(2), MCA, notwithstanding any recommendations made by the study committee now reviewing Lewis and Clark County government, or placement on the ballot thereof.

Very truly yours,

MIKE GREELY
Attorney General