

COUNTY COMMISSIONERS - Responsibilities with regard to minutes and records of their minutes;
COUNTY OFFICERS AND EMPLOYEES - Duty of clerk and recorder to record minutes of board of commissioners into minute book;
MONTANA CODE ANNOTATED - Sections 7-4-2611, 7-5-2107, 7-5-2123, 7-5-2129 to 7-5-2131.

HELD: The county clerk and recorder is not required to attend the meetings of the board of county commissioners and take the original notes of the proceedings, unless the board so requests. She is required only to record the minutes into the minute books as a permanent record.

21 June 1985

John P. Connor Jr.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You requested an opinion concerning:

Whether the county clerk and recorder or her designated agent is required to attend and take original notes of the proceedings at the meetings of the board of county commissioners.

Section 7-4-2611, MCA, sets forth the duties of the clerk and recorder. It provides in pertinent part:

(1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county

clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

....

(b) record all the proceedings of the board;

....

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

....

(1) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

The proceedings of the board are to be recorded in a "Minute Book" which the board of county commissioners is required to keep. § 7-5-2129, MCA. "The records must be signed by the chairman and the clerk." § 7-5-2130, MCA. "The books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge." § 7-5-2131, MCA. Finally, the board must publish in a newspaper a fair summary of the minutes and records of all of its proceedings. § 7-5-2123, MCA.

Because section 7-4-2611, MCA, requires the clerk and recorder to record the proceedings of the board, the question that arises is what is meant by the term "record." This term is not defined in the Montana Code Annotated. Black's Law Dictionary 1437 (4th ed. 1951) defines the verb "record" as follows:

[To] enter in a book or on parchment, for the purpose of preserving authentic evidence of ... or to register or enroll. To transcribe a document, or enter the history of an act or series of acts, in an official volume, for the purpose of giving notice of the same, of

furnishing authentic evidence, and for preservation. [Citing authority.]

Other jurisdictions, in addressing various issues pertaining to officials' duties to record information, similarly define the verb "record" as to copy or transcribe the information into some permanent book. State v. Noren, 621 P.2d 1224, 1225 (Utah 1980); Beatty v. Hughes, 143 P.2d 110, 111 (Cal. 1943).

The responsibility of the clerk and recorder, as it relates to the proceedings of the board of county commissioners, is to record the minutes of the proceedings into the minute book maintained pursuant to law, and to make the book available for public examination upon request. The board is responsible for the preparation, content, and publication of the minutes. The board may employ its own personnel to take the original notes of the proceedings during the meetings pursuant to section 7-5-2107, MCA.

I conclude, therefore, that section 7-4-2611, MCA, requires the clerk and recorder only to record the minutes of the proceedings into the minute book; it does not require her to actually attend the meetings and take the original notes.

THEREFORE, IT IS MY OPINION:

The county clerk and recorder is not required to attend the meetings of the board of county commissioners and take the original notes of the proceedings, unless the board so requests. She is required only to record the minutes into the minute book as a permanent record.

Very truly yours,

MIKE GREELY
Attorney General