

VOLUME NO. 41

OPINION NO. 27

CONSTITUTIONS - Legislature, convening special sessions;
LEGISLATURE - Special sessions, majority of members of
Legislature required to convene;

MONTANA CODE ANNOTATED - Sections 5-3-101, 5-3-107;

MONTANA CONSTITUTION - Article V, section 6; article VI,
section 8(2); article VIII, section 8; article IX,
section 5; article XIV, section 1; article XIV,
section 8;

OPINIONS OF THE ATTORNEY GENERAL - 34 Op. Att'y Gen. No.
61 (1972), 35 Op. Att'y Gen. No. 6 (1973).

HELD: Under article V, section 6, of the Montana
Constitution, a majority of all of the members
of the Legislature is required to request that
the Legislature be convened in a special
session. A majority of each house is not
required to request that a special session be
convened.

11 September 1985

The Honorable Jim Waltermire
Secretary of State
Room 225, State Capitol
Helena MT 59620

Dear Mr. Waltermire:

You have requested my opinion on the following matters:

1. May the Legislature call a special session by an affirmative poll reply from a simple majority of the total membership of the Legislature or is a majority of both the house and senate required?
2. If a majority of each house is required, does section 5-3-107, MCA, nonetheless impose on the Secretary of State a mandatory duty to notify based only upon an affirmative response from a simple majority of the legislators?

Article V, section 6, of the Montana Constitution states in pertinent part:

The legislature may be convened in special session by the governor or at the written request of a majority of the members.
[Emphasis added.]

Section 5-3-101, MCA, repeats this language.

Your first question was addressed in an earlier Attorney General's Opinion, 35 Op. Att'y Gen. No. 6 at 13 (1973), which held that article V, section 6, requires a written request of a majority of each house of the Legislature to call the Legislature into special session. For the reasons given below, I disagree with and expressly overrule that opinion.

Terms in a constitution must be given the natural meaning in which they are usually understood. Jones v. Judge, 176 Mont. 251, 254, 577 P.2d 846, 848 (1978). Intent of the framers of the constitution is first determined from the plain meaning of the words used, and if that is possible, no other means of interpretation may be applied. State v. Cardwell, 37 St. Rptr. 750, 752, 609 P.2d 1230, 1232 (1980); Haker v. South-Western Railway Company, 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The pertinent language of article V, section 6, states that "the legislature may be convened in special session ... at the written request of a majority of the members." This language clearly requires requests from

a majority of all of the members of the Legislature as a whole. By contrast, the language of article V, section 6, does not require that a majority of the members of each house act, as does the language of certain other constitutional provisions. See art. VIII, § 8 ("No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon"); art. IX, § 5 ("The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature").

Assuming, for the sake of argument, that the intent of the drafters of article V, section 6, cannot be determined from the plain and ordinary meaning of the words used, my opinion is not altered by resorting to the history of the section. The pertinent language of article V, section 6, was adopted by the delegates to the 1972 Constitutional Convention as part of the legislative article. Subsequently, during a discussion of the executive article, the delegates considered a provision which authorized the convening of a special session of the Legislature when called by the governor or by two-thirds of the members of each house. Tr. 1972 Montana Constitutional Convention, p. 958. The section was amended to require "a majority of the members of each house" rather than "two-thirds of the members of each house." The relevant portions of the debate are quoted as follows:

DELEGATE AASHEIM: In the Legislative Article, we say this: "The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members." We don't say "a majority of each house", so we're going to be in conflict.

CHAIRMAN GRAYBILL: Mr. Joyce, do you care to straighten this out so that you don't have a substantive issue for Style and Drafting? You could do that by striking the words "of each house."

DELEGATE JOYCE: Also amend.

CHAIRMAN GRAYBILL: All right, in line 17 on page 9--and, anyway, it's in the second

sentence of section 11--it should then read: "At the written request of a majority of the members, the presiding officers of both houses may convene the legislature." So many as shall be in favor of this amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now, it seems to me that we've given Style and Drafting only a Style and Drafting problem.

....

DELEGATE ROEDER: I think you may have been wrong on your statement that we're left with just a Style and Drafting problem, because the way that thing reads in the Legislative Articles that came off the magic typewriters is that the Legislature may be convened in special sessions or at the written request of a majority of the members. So, they're not, in substance, the same.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I think that if I made a motion to recess, that the people involved in this could straighten it out; and when we come back from recess, it would be much easier to present it for the whole floor. So, I move we stand in recess until 3:15 today.

....

(Convention recessed at 3:04 p.m.--reconvened at 3:27 p.m.)

....

CHAIRMAN GRAYBILL: All right, are we ready to adopt Section 11? Members of the committee, you have before you, on the recommendation of

Mr. Joyce that when this committee does arise and report, after having had under consideration Section 11, that the same be adopted. The language is, "he may convene the legislature." And the other language: "At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." So many as are in favor of Section 11, as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Mr. Clerk, will you read Section 12.

Tr. 1972 Montana Constitutional Convention, pp. 960-61.

The above-quoted discussion is consistent with the interpretation of article V, section 6, which reflects the plain meaning of the language, i.e., that a special session may be convened by a majority of all the members of the Legislature, rather than a majority of the members of each house. The debate of the convention delegates indicates that they considered language requiring that a majority of each house act but decided against the inclusion of such language. Rejection of a specific provision indicates an intention not to include the rejected provision in the final version of the law. 2A Sutherland Statutory Construction § 48.18 (4th ed. 1982); Isbister v. Boys' Club of Santa Cruz, 192 Cal. Rptr. 560 (Cal. App. 1983); People for Environmental Progress v. Leisz, 373 F. Supp. 589, 592 (C.D. Cal. 1974). While rejection of specific language may not conclusively control its interpretation, especially where there is no explanation of why the language was deleted, the conscious decision of the drafters to exclude the language, together with the plain and ordinary meaning of the words finally adopted, is compelling. See State v. Crawley, 447 A.2d 565, 568 (N.J. 1982).

The plain meaning of article V, section 6, dealing with the convening of special sessions, is not offensive to the nature of a bicameral Legislature, although that was

the reasoning followed in 35 Op. Att'y Gen. No. 6 at 12 (1973). Whereas each house in a bicameral Legislature must act on legislation independently, there are other functions which may be carried out by one house acting alone (art. VI, § 8(2), confirmation of executive appointments by the senate); or by both houses acting as a single unit (art. XIV, § 1, "the Legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution"; art. XIV, § 8, "amendments to this constitution may be proposed by any member of this legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election"). The discussion of the constitutional convention delegates concerning the latter section suggests that some delegates believed that a bicameral Legislature requires that each house have veto power over nearly every action of the other (such as when amending the constitution by legislative referendum) and that "to permit one body to outvote the other completely would negate the whole principle." Tr. at 494. The convention, however, expressly rejected the notion that both houses had to give approval in order to amend the constitution by legislative referendum. See Tr. at 493-95 and 522-26, esp. at 524.

In conclusion, the plain and ordinary meaning of the language of article V, section 6, favors the interpretation that a majority of the Legislature, rather than a majority of each house, is required to request that a special session of the Legislature be convened. Even if the history of the provision is considered, the fact that the delegates rejected language that would clearly require that a majority of each house request a special session suggests that the requirement was not intended. Action by a majority of all the members of the Legislature as a whole is not necessarily inconsistent with the nature of a bicameral Legislature and is provided for in other constitutional provisions. The calling of a special session is not an essential function requiring independent approval by each of the two houses, as is the passage of legislation, discussed in 34 Op. Att'y Gen. No. 61 at

283 (1972). For these reasons 35 Op. Att'y Gen. No. 6 at 12 (1973) is overruled.

The answer to your first question makes a response to your second question unnecessary. Section 5-3-107, MCA, which tracks the pertinent language of article V, section 6, of the Montana Constitution, should be interpreted consistent with my interpretation of article V, section 6.

THEREFORE, IT IS MY OPINION:

Under article V, section 6, of the Montana Constitution, a majority of all of the members of the Legislature is required to request that the Legislature be convened in a special session. A majority of each house is not required to request that a special session be convened.

Very truly yours,

MIKE GREELY
Attorney General