

CITIES AND TOWNS - Recommendations of local government study commission;
LOCAL GOVERNMENT - Recommendations of local government study commission;
LOCAL GOVERNMENT STUDY COMMISSIONS - Recommendation to increase size of city commission;
MONTANA CODE ANNOTATED - Sections 7-3-114, 7-3-114(2), 7-3-171 to 7-3-193, 7-3-185(1)(a)(i), 7-3-307, 7-3-704(1), 7-3-4314(1).

HELD: The local government study commission may not recommend that the number of city commissioners be increased from five to seven, unless it does so as part of a recommendation to adopt a form of government that permits a seven-member commission.

21 February 1986

David V. Gliko
Great Falls City Attorney
P.O. Box 5021
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Dear Mr. Gliko:

You have asked my opinion on the following question:

Whether the Great Falls Local Government Study Commission may recommend an increase in the number of city commissioners from five to seven without the adoption of a charter form of government.

Great Falls adopted a commission-manager form of government in 1973. In 1975, the Legislature established five basic optional forms of local government, plus a charter form. Those municipal governments with a commission-manager form of government, that did not subsequently adopt one of the six statutory forms, are controlled by certain designated statutes which are currently listed in section 7-3-114, MCA. One of these statutes is section 7-3-317(2), MCA, which provides in its entirety:

The size of the commission, which shall be a number not less than three, shall be

established when the form is adopted by the voters, and:

....

(2) community councils to advise commissioners may be authorized by ordinance.

(Emphasis added.) Section 7-3-114(2), MCA, however, is also applicable to municipalities with commission-manager forms of government that did not adopt one of the six statutory forms of government. It provides that the size of a commission may not exceed five members.

Statutes must be harmonized if possible. Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1982). Reading sections 7-3-114(2) and 7-3-317(2), MCA, together, I conclude that Great Falls is bound to have not less than three nor more than five members of its city commission under its present commission-manager form of government.

Beginning in 1979 the Legislature enacted procedures allowing voters to alter their form of local government. Sections 7-3-171 to 193, MCA, enacted in 1983, provide the mechanism by which a local government study commission can recommend a change in the local government and the electors can vote on the study commission's recommendation. A local government study commission's recommendations may include a proposal to make amendments to the existing form of government. § 7-3-185(1)(a)(i), MCA. Consequently, the Great Falls Local Government Study Commission may recommend, under the present form of government, a change in the number of city commissioners so long as the number is not less than three nor more than five, as required by sections 7-3-114(2) and 7-3-317(2), MCA.

While a seven-member commission is not permitted under the present form of government, the study commission may make such a recommendation as part of a recommendation to adopt one of the six statutory forms of government that permit a larger commission. For example, the statutory form of commission-manager government, established under Title 7, chapter 3, part 3, MCA, and the charter form of government, Title 7, chapter 3, part 7, MCA, both permit a seven-member commission. See §§ 7-3-317, 7-3-704(1), MCA.

You refer to section 7-3-4314(1), MCA, which requires five city commissioners for all cities with a population of 15,000 or more, and is thereby inconsistent with the flexibility provided by the statutes cited above. The enactment of section 7-3-4314(1), MCA, however, precedes the enactment of Title 7, chapter 3, parts 1 to 7, MCA. Earlier statutes, to the extent of any repugnancy, are controlled by later statutes. State ex rel. Wiley v. District Court, 118 Mont. 50, 55, 164 P.2d 358, 361 (1946).

THEREFORE, IT IS MY OPINION:

The local government study commission may not recommend that the number of city commissioners be increased from five to seven, unless it does so as a part of a recommendation to adopt a form of government that permits a seven-member commission.

Very truly yours,

MIKE GREELY
Attorney General