

VOLUME NO. 41

OPINION NO. 56

LOCAL GOVERNMENT - Recommendations of local government study commission;

LOCAL GOVERNMENT STUDY COMMISSIONS - Requirement that a recommendation be made in commission's final report;

MONTANA CODE ANNOTATED - Sections 7-3-103, 7-3-171 to 7-3-193;

MONTANA CONSTITUTION - Article XI, section 9(2).

HELD: A local government study commission may not have an alternative form of local government placed on the ballot unless the study commission recommends adoption of the alternative plan.

21 March 1986

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following question:

May a local government study commission have an alternative form of government placed on the ballot if the study commission does not recommend the adoption of that alternative plan?

In 1979 the Legislature enacted procedures allowing voters to alter their form of local government. In 1983 the Legislature adopted sections 7-3-171 to 193, MCA, which provide the mechanism by which a local government study commission, hereinafter referred to as a study commission, can recommend a change in government and the electors can vote on the study commission's recommendations. A county study commission's recommendations may include any of the actions listed in section 7-3-185(1)(a), MCA, which provides the following:

Scope of study commission recommendations.

(1)(a) A study commission examining the government of a county may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation or amendments to an existing consolidation;

(v) in cooperation with a study commission in an adjoining county, recommend county merger; or

(vi) submit no recommendation.

Your question has arisen because the local government study commissioners for Gallatin County apparently are considering offering the voters an opportunity to adopt an alternative form of local government, pursuant to section 7-3-185(1)(a)(ii), MCA, without endorsing the alternative as a study commission recommendation. I conclude from an examination of the statutes on local government study commissions that such an action is not authorized by law.

Study commissions are established whenever the electorate votes to conduct local government review, and, in any case, every ten years as required by the Montana Constitution, article XI, section 9(2). § 7-3-173, MCA. Once the members of a study commission are elected they must meet and establish a timetable for their deliberations and actions. § 7-3-186, MCA. Terms of office of study commission members end either 90 days after a vote on the commission recommendations or, if no change is recommended, 30 days after submission of the commission's final report. § 7-3-178(1), MCA. Final reports must be adopted and special elections scheduled if the study commission recommends that changes to the existing form of government be made. § 7-3-186(2)(d), MCA. Supplementary reports may be prepared. § 7-3-190, MCA.

According to the language of section 7-3-187, MCA, which sets forth the requirements for the contents of a study commission's final report, a special election on an alternative form of government is scheduled only if the study commission recommends an alternative. Section 7-3-187, MCA, in pertinent part, states:

Final report. (1) Every study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report shall contain the

following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which may be held in conjunction with a regularly scheduled election, at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report shall contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report shall so indicate. [Emphasis added.]

The language of the local government study commission statutes contemplates that a study commission may not wish to recommend any changes to the existing form of government. See, specifically, §§ 7-3-185(1)(a)(vi), 7-3-187(3), MCA. If changes are recommended, an election is to be scheduled pursuant to section 7-3-187(1), MCA. Should voters desire a change in their form of government, despite the fact that their study commission is not so disposed, the voters may propose a change by petition as is permitted in section 7-3-103, MCA.

THEREFORE, IT IS MY OPINION:

A local government study commission may not have an alternative form of local government placed on the ballot unless the study commission recommends adoption of the alternative plan.

Very truly yours,

MIKE GREELY
Attorney General