

VOLUME NO. 41

OPINION NO. 88

CITIES AND TOWNS - Adoption of new plan of city
government;

LOCAL GOVERNMENT - Adoption of new plan of city
government;

MONTANA CODE ANNOTATED - Sections 7-3-113(1), 7-3-150(2), 7-3-158(1) and (3), 7-3-160, 7-3-201 to 7-3-224, 7-3-219, 7-3-220, 13-3-101;
MONTANA CONSTITUTION - Article XI, sections 3(1), 9(1);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 37 (1985), 41 Op. Att'y Gen. No. 70 (1986).

- HELD: 1. A proposed municipal commission-executive form of government is not restricted by the structural characteristics listed in section 7-3-113(1), MCA.
2. The ballot division required by section 7-3-150(2), MCA, must be done according to precinct boundaries.
3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of local government calls for an elected city treasurer, the election schedule required by section 7-3-160, MCA, must be followed for that office.

17 October 1986

Leo W. Tracy
Whitefish City Attorney
6336 Highway 93 South
Whitefish MT 59937

Dear Mr. Tracy:

You have requested my opinion on the following questions:

1. Does section 7-3-113(1), MCA, set forth mandatory characteristics of a proposed municipal council-mayor form of government?
2. Do the general ballot requirements of section 7-3-150(2), MCA, apply to precincts or to wards when dealing with proposed alterations to a municipal government?
3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of government calls for

an elected city treasurer, must the election schedule required by section 7-3-160, MCA, be followed?

Your first question involves an interpretation of section 7-3-113(1), MCA. This statute is discussed at length in 41 Op. Att'y Gen. No. 37 (1985). In 1975, the Legislature enacted various local government statutes which defined existing governmental forms and provided for alternative forms for voter review, pursuant to sections 3(1) and 9(1) of article XI of the Montana Constitution. Section 7-3-113(1), MCA (formerly codified as section 16-5115.1(1), R.C.M. 1947), described the structural characteristics of an existing council-mayor form of government in a municipality that did not adopt an alternative form of government.

You note in your opinion request that the city of Whitefish had a council-mayor form of government until 1981. In 1981 a voter-approved charter form of government took effect. Presently, voters will have an opportunity to vote on a plan of government proposed by petition of the electorate. The proposed plan is the commission-executive form of government described in sections 7-3-201 to 224, MCA. As you note, under this form of government, various options are offered as to the details or structural characteristics of the form, such as whether the elections shall be partisan or nonpartisan and whether the city commission chairman shall be elected by other commission members or selected as provided by ordinance. See §§ 7-3-219, 7-3-220, MCA. You have asked whether any of these options set forth for the statutory commission-executive form of government may be proposed, or whether, instead, the options contained in section 7-3-113(1), MCA, are mandated.

Section 7-3-113(1), MCA, as already noted, was enacted to define a form of government in existence when the local government statutes were first adopted. The structural characteristics of government required by this statute were intended to apply if voters did not adopt an alternative form of local government. See discussion in 41 Op. Att'y Gen. No. 37 (1985). The statute does not apply to proposed alternative forms of government, which may recommend any of the structural characteristics of government permitted in the local government statutes.

Of course, the Whitefish electors must vote on those options proposed in the plan that is contained in the petition. However, the plan proposed by petition need not include only the options set forth in section 7-3-113(1), MCA.

Your next question requires an interpretation of the term "precinct" as used in section 7-3-150, MCA. That section provides general ballot requirements for adoption of an alternative form of government proposed by petition. Subsection (2) requires that the ballots be divided into two sets.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

You note that there are three precincts located exclusively within the city of Whitefish. However, because precincts are established by the county, you ask whether section 7-3-150(2), MCA, implicitly refers to "wards" rather than "precincts" where the ballot issue involves proposed changes in municipal government only.

Section 13-3-101, MCA, defines "precincts" as the territorial unit for elections. Since section 7-3-150(2), MCA, refers to "precinct" and since the city of Whitefish is divided into precincts, I conclude that the ballot division required in section 7-3-150(2), MCA, should be done according to precinct boundaries. However, because of the odd number of precincts in Whitefish, it is impossible to meet all of the requirements of section 7-3-150(2), MCA. In an effort to substantially comply, I suggest that on the ballots in two precincts the existing plan of government be printed as the first item, and on the ballots in the third precinct the proposed form of government be printed as the first item. Although this does not

result in two "equal" sets of ballots, as is required by the first sentence of section 7-3-150(2), MCA, it is consistent with the intent of the last sentence, which requires a local government with only one precinct to list the existing plan first on all ballots.

Your third question concerns the status of the incumbent city treasurer who is a nonelected city employee under the existing form of government. Section 7-3-158(1), MCA, sets forth the general rule that "holdover" members of the governing body continue in office only until the new officers are elected and qualified. Two exceptions to this general rule are permitted under subsection (3), which provides that a petition proposing an alternative form of government may provide that an elected officer either continue to serve out his full term of office or that he be retained for his full term as a local government employee. If the first of these exceptions is adopted as a part of the new plan of government, then the election required by section 7-3-160, MCA, would be postponed for those holdover officers affected by the exception.

No other exceptions are authorized for members of the existing governing body, as I concluded in 41 Op. Att'y Gen. No. 70 (1986). The exceptions in section 7-3-158(3), MCA, apply only to elected officers. Since the incumbent city treasurer is not an elected officer, the exceptions do not apply, and the general rule found in section 7-3-158(1), MCA, would operate to discontinue the incumbent city treasurer's term of office at the time the new governing body is elected and qualified. Section 7-3-158(1), MCA, contemplates an election scheduled pursuant to the requirements of section 7-3-160, MCA. Those provisions should be followed for the new position of elected city treasurer.

THEREFORE, IT IS MY OPINION:

1. A proposed municipal commission-executive form of government is not restricted by the structural characteristics listed in section 7-3-113(1), MCA.
2. The ballot division required by section 7-3-150(2), MCA, must be done according to precinct boundaries.

3. Where the existing office of city treasurer is a nonelected position, and the proposed plan of local government calls for an elected city treasurer, the election schedule required by section 7-3-160, MCA, must be followed for that office.

Very truly yours,

MIKE GREELY
Attorney General