

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 58

CITIES AND TOWNS - Consolidation of city and county law enforcement services;
CITIES AND TOWNS - No requirement for law enforcement commission for consolidated law enforcement services;
COUNTIES - No requirement for law enforcement commission for consolidated law enforcement services;
INTERGOVERNMENTAL COOPERATION - No requirement for law enforcement commission for consolidated law enforcement services;
POLICE - No requirement for law enforcement commission for consolidated law enforcement services;
MONTANA CODE ANNOTATED - Title 7, chapter 32, part 41; sections 1-2-101, 7-11-301 to 7-11-310, 7-11-304, 7-32-2101 to 7-32-2145, 7-32-4151 to 7-32-4164, 7-32-4151, 7-32-4154.

HELD: A consolidated city-county law enforcement agency, governed by sections 7-11-301 to 310, MCA, does not require a law enforcement commission established under section 7-32-4151, MCA.

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25 January 1988

James Yellowtail
Big Horn County Attorney
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Dear Mr. Yellowtail:

You requested my opinion on the following questions:

1. When police and sheriff's departments have consolidated by election, is a law enforcement or police commission required to be established?
2. If a commission is required, how may such a commission be established when the consolidation proposal approved by the electorate contained no reference to one?

Your letter discloses that in 1976 a cooperative study commission, consisting of representatives of the City of Hardin and Big Horn County, proposed a consolidation plan for the purpose of consolidating the city police and county sheriff's departments. The proposal was successfully presented to the electors and the consolidation became effective in 1977. In 1981, the city and county entered into an interlocal agreement establishing a law enforcement commission patterned after a police commission provided for in sections 7-32-4151 to 4164, MCA. Recently, discussion among members of the city and county commissions has focused on the desire to eliminate the law enforcement commission. These discussions led to the present opinion request.

The initial consideration is the applicability of section 7-32-4151, MCA, to the Hardin-Big Horn County law enforcement consolidation. That section is contained in Title 7, chapter 32, part 41, entitled "Municipal Police Force," and requires the establishment of a police commission in all cities and towns that have organized police departments. Under that section the members of the commission are chosen by the city's chief executive and must be qualified to hold municipal office. The police commission is established for the purpose of hiring, disciplining, and firing policemen. §§ 7-32-4154 to 4164, MCA. Clearly, section 7-32-4151, MCA, does not apply to city-county consolidated law enforcement services because they are not an organized

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city police department and are not intended to be administered exclusively by the city.

The statutes governing consolidation and transfer of services between a city and a county are found in sections 7-11-301 to 310, MCA. Those sections do not require the establishment of a law enforcement commission for consolidated or transferred law enforcement agencies. Section 7-11-304, MCA, does, however, require the service (or consolidation) plan to include inter alia the method of administration of the consolidated or transferred service.

According to the Hardin-Big Horn County consolidation plan, the personnel and equipment of the city police department were transferred to the county sheriff's department. The department was to continue to be run by the sheriff, and the law enforcement officers were to be designated as deputies. The budgetary responsibilities were to be retained by the board of county commissioners, and the city was to reimburse the county for the cost of the law enforcement services provided to it. In essence, therefore, the consolidation plan transferred the city police department to the sheriff's department which was to continue operating under the statutes governing the county sheriff (§§ 7-32-2101 to 2145, MCA), and providing law enforcement services to the city in return for payment for those services.

A county sheriff is not required to have a commission like the police commission in section 7-32-4151, MCA. Although the Legislature requires a police commission to hire, discipline, and fire policemen, it has placed those corresponding responsibilities with respect to deputies with the sheriff alone, and has provided, in sections 7-32-2104 to 2112, MCA, guidelines for the sheriff to carry out those responsibilities. I cannot construe a requirement for a commission when the Legislature has failed to do so. See § 1-2-101, MCA.

It is thus evident that there is no requirement for a law enforcement commission for the Hardin-Big Horn County consolidated law enforcement services.

Since my answer to your first question is negative, your second question need not be addressed.

THEREFORE, IT IS MY OPINION:

A consolidated city-county law enforcement agency, governed by sections 7-11-301 to 310, MCA, does not require a law enforcement commission established under section 7-32-4151, MCA.

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Very truly yours,

MIKE GREELY
Attorney General