

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

Steve Bullock  
Attorney General



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August 17, 2012

Linda McCulloch  
Montana Secretary of State  
1301 E. 6<sup>th</sup> Ave.  
PO Box 202801  
Helena, MT 59620

Re: Letter of Advice Regarding Voting by Absentee Ballot

Dear Secretary McCulloch:

You have written this Office seeking guidance as to whether Montana law allows registered voters to request, complete and return an absentee ballot at a satellite location established by the county. Because the answer to your question is dependent upon whether a county government has the authority to open a satellite office, I have re-phrased your question as follows:

Does a county have the authority to establish a satellite office outside of the county seat and, if such authority exists and an office is established, is in-person absentee ballot voting a service that may be provided at the satellite office to residents of the county?

As will be discussed in more detail in this letter, five counties have already determined they have the legal authority to establish a satellite office and provide services, including in some instances, in person return of absentee ballots. For this reason, and given the time sensitive nature of your request, I have determined that a letter of advice rather than a formal opinion is the appropriate response.

In your request to this office for guidance, you include the legal analysis conducted by your staff. The memorandum provided does not consider the underlying question of a county government's authority to establish a satellite office and provides scant legal analysis of the relevant statutes. After review of your request and the memorandum, I find that a more thorough analysis of the issue is necessary to answer the question presented.

I. May a county government open a satellite office outside the County Seat?

Montana Code Annotated §7-4-2203 sets forth the officers, in addition to county commissioners, that may be appointed or elected in each county. It is the duty of the county commissioners to supervise the official conduct of all county officers. Mont. Code Ann. §7-4-2110. The county

officers delineated in section 7-4-2203 are required to keep their offices at the county seat. Mont. Code Ann. § 7-4-2211.

Montana law does not expressly address the question of whether a county may open a satellite office to provide services to its residents outside the county seat. Montana is obviously a large, rural state with counties that cover vast areas of land. It is easy to see that provision of services at a satellite location could be of benefit to residents living outside the county seat, and in fact, five Montana counties have established such offices: Glacier, Missoula, Rosebud, Yellowstone and Lincoln.

In order to answer the question of whether counties have the authority to establish such offices, it is necessary to understand the constitutional and statutory law setting forth the powers of local government in Montana. Montana's constitution provides for two forms of local government: a local government operating under a self-government charter and one operating without such a charter, which is known as a general powers form of government.

A general powers county government has "legislative, administrative, and other powers provided or implied by law." Mont. Const. art. XI, § 4. A county which has adopted a self-government charter is granted "any power not prohibited by the constitution, law, or charter." Mont. Const. art. IX, § 6.

Because there is nothing in Montana law prohibiting the establishment of a satellite office outside a county seat to provide governmental services, I conclude that a county with self-government powers has the authority to establish such an office.

Unlike a county operating under a self-government charter, a county with general government powers derives its powers only from those expressly or implicitly granted by the Legislature. The constitution directs that the legislature's grant of such power is to be liberally construed. See Mont. Const. art. XI, § 4(2). Therefore, in order to answer whether a county with general government powers has the authority to establish a satellite office, it is necessary to consider the statutory powers granted to county government.

Montana Code Annotated § 7-2-2103 sets forth the powers of county government. It provides:

**7-1-2103. County powers.** A county has power to:

- (1) Sue and be sued;
- (2) Purchase and hold lands within its limits;
- (3) Make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (4) Make orders for the disposition of its property that the interests of its inhabitants require;
- (5) Subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law.

Section 7-1-2104 provides that the county's powers can only be "exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law."

Based upon the language found in subsection (3) and (4) granting the county the power to purchase and hold land, hold personal property, and enter into contracts, and to determine the appropriate disposition of its property to serve inhabitants of the county, and in light of the constitutional instruction that a county's general government powers are to be liberally construed, I conclude that a county government, operating through its county commissioners, has the implied authority to establish satellite offices for the provision of government services. Establishment of a satellite office would be a proper exercise of a county governments "administrative" authority as implied by section 7-1-2103. The determination as to whether to establish a satellite office is not a legislative act by the county. The determination falls within a county's administrative authority, exercised through its county commissioners, to determine the best way to provide services to its residents based upon available resources. This is reflected in the provision of services in the counties I listed above which have already established satellite offices. Based upon a phone survey to those offices, they are presently providing a range of services which include motor vehicle license and registration renewal, acceptance of property tax payments, processing of requests for birth and death certificates and return of absentee ballots.

Based upon this analysis, I conclude that a county government, operating through its county commissioners, may open a satellite office outside the county seat to provide services to residents.

II. May a county offer voting by absentee ballot at a satellite location?

I now turn to the question of whether a county may provide voting by absentee ballot at a satellite location. As mentioned above, five counties currently provide services to residents at satellite locations outside of the county seat. Review of the services provided in those satellite offices reveals that services range from strictly motor vehicle related services (license and registration renewal) to collection of property taxes and acceptance of absentee ballots. Again, while Montana law does not expressly authorize the provision of such services, it also does not prohibit a county from providing them. I conclude that unless provision of such services is in some way prohibited under Montana law, the decision of what services to provide at a satellite location is left to the county commissioners in conjunction with the county officers listed in Mont. Code Ann. § 7-4-2203. For instance it is my understanding that the Glacier County Sheriff and Treasurer share office space and personnel at the satellite location in Browning.

To determine whether voting by absentee ballot is a service that may be provided at a satellite location, I must consider whether the statutes governing absentee voting would preclude it. Montana law designates the county Clerk and Recorder as the election administrator. Mont. Code Ann. § 13-1-301. As the election administrator the county Clerk and Recorder is the official responsible for "the administration of all procedures relating to the registration of electors and the conduct of elections." *Id.* The procedures for voting by absentee ballot are set forth in Mont. Code Ann. § 13-13-201. It provides:

**13-13-201. Voting by absentee ballot—procedures.**

(1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) *The elector may vote absentee by:*

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;
- (d) executing the affirmation printed on the return envelope; and
- (e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:***

- (i) the election office;*
- (ii) a polling place within the elector's county;*
- (iii) pursuant to §13-13-229, the special absentee election board; or*
- (iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.*

(3) Except as provided in §13-21-206 and §13-21-207, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on Election Day.

(4) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be, but is not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to §13-2-207, government check, or other government document that shows the elector's name and current address.

(Emphasis added.)

The question, therefore, becomes whether the requirement that a voter return, either by regular mail or hand delivery, the ballot with all appropriate enclosures to "*the election office*" would preclude such a process from occurring at a satellite office. Although, "*the election office*" is written in the singular a general rule governing statutory construction states that "[t]he singular includes the plural and the plural the singular." Mont. Code Ann. § 1-2-105(3). Thus, the fact that the statute on its face refers to a singular "office" is not determinative of the question.

Interestingly, this rule of construction was applied by the Montana Supreme Court in a case involving notice of polling places. *Hauswirth v. Mueller*, 25 Mont. 156 (1901). In that case, defendants argued notice of polling locations was not improper because the governing statute was written in the singular requiring notice of the "place of holding the election." *Id.* at 160. The Court applied the above noted rule of construction to conclude that the statute required notice of each place the election was to be held and that the singular reference included the plural "places." *Id.* at 161.

Applying the same principle of statutory construction to the phrase "*the election office*" as used in section 13-13-201 and considering that the election administrator is statutorily authorized to oversee the conduct of elections, I conclude the election administrator may designate the election *office* or *offices* for purposes of voting by absentee ballot.

This conclusion is consistent with the motor vehicle services already being provided in all five counties with satellite locations. For instance, the law governing vehicle registration provides in relevant part a "Montana resident who owns a motor vehicle. . . shall register. . . in the office of the county treasurer" and that registration renewal may be accomplished by submitting full payment to "a county treasurer." See Mont. Code Ann. § 61-3-303 and § 61-3-312. While these statutes do not expressly authorize provision of motor vehicle registration services at satellite locations, the counties have properly exercised their administrative powers to provide such services to county residents.

Based upon the above analysis, I conclude that a county government may offer voting by absentee ballot at a satellite location. While provision of absentee ballot voting at a satellite location is permissible, it is not mandatory and would be at the discretion of the election administrator with approval from the county commissioners.

You also inquire as to whether a satellite office providing voting by absentee ballot must be open for the entire 30-day period when absentee ballots are available. Montana law requires that the election administrator "ensure that ballots are available for voting at least 30 days prior to an election. Mont. Code Ann. § 13-13-205(1)(a). The law governing county office hours provides that each officer shall keep their office open for business during the office hours determined by the governing body by resolution after a public hearing. Mont. Code Ann. § 7-4-102. Thus, an election administrator providing services at a satellite location must ensure that at least 30-days prior to the election absentee ballots are available at the satellite location during the hours which the satellite location is otherwise open for business as approved by the commissioners of the county.

In conclusion, I would note that voting is considered a fundamental political right in this country. As the United States Supreme Court has recognized, the right to vote is "at the heart of this country's democracy." *Burson v. Freeman*, 504 U.S. 191, 198. Interpreting laws impacting voter qualifications, prerequisites to voting, or standard practices or procedures with respect to voting, the U.S. Supreme Court has endorsed a broad construction of voting rights. *Holder v. Hall*, 512 U.S. 874, 949. While that endorsement has been in the context of challenges related to the Voting Rights Act of 1965, the conclusion here, that county governments may provide absentee balloting services at satellite county offices is consistent with the guiding principle applied by the Court in voting rights cases.

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

A handwritten signature in cursive script that reads "Ali Bovington" followed by a horizontal line.

ALI BOVINGTON  
Deputy Attorney General

AB:sj