

## 46 Op. Att'y Gen. No. 14

CITIES AND TOWNS - Ability of legislative body under self-government charter form of government to perform legislative as well as executive functions;

COUNTIES - Ability of legislative body under self-government charter form of government to perform legislative as well as executive functions;

LOCAL GOVERNMENT - Ability of legislative body under self-government charter to perform legislative as well as executive functions;

MUNICIPAL GOVERNMENT - Ability of legislative body under self-government charter to perform legislative as well as executive functions;

MONTANA CODE ANNOTATED - Title 7, chapter 3, part 7; sections 7-3-111, -704(1), -705.

MONTANA CONSTITUTION - Article XI, section 5.

HELD:

A charter form of government may combine legislative and executive powers in the government's legislative body.

March 19, 1996

Mr. Mike Salvagni  
Gallatin County Attorney  
615 South 16th Avenue, Room 100  
Bozeman, MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following question:

May a charter form of county government combine legislative and executive powers in the commission?

Gallatin County currently operates under a commission form of government as defined in Mont. Code Ann. § 7-3-111. Apparently, the local government study commission in Gallatin County is considering submitting to the voters a charter form of government and questions whether the proposed charter can vest executive as well as legislative functions in the legislative body.

The charter form of government is specifically authorized in article XI, section 5 of the Montana Constitution, which provides in pertinent part:

**Self-government charters.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

. . . .

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

In 1975, the legislature implemented the above constitutional mandate and enacted statutory procedures for charter forms of government. See Mont. Code Ann. tit. 7, ch. 3, pt. 7. Mont. Code Ann. § 7-3-704(1) requires that the charter "provide for an elected legislative body (called a commission or council)" or "for a legislative body comprised of all qualified electors." The provisions concerning who may serve as executive officer or perform the executive functions under a charter form of government are set forth in Mont. Code Ann. § 7-3-705, which states:

**Officials and personnel.** (1) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office (except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote), the grounds for his removal, and his powers and duties. ***Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.***

(2) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

(Emphasis added.) Mont. Code Ann. § 7-3-705(1), by its clear language, contemplates that a charter may provide that the executive and administrative functions of the government "will be performed by one or more members of the legislative body." That phrase clearly allows the entire legislative body or commission to perform the executive functions. Accordingly, a county charter may provide that the legislative body or commission will perform the executive functions of the county government in addition to its legislative duties. Whether the executive functions are performed by one or all of the members of the legislative body or commission is dependent on the charter language adopted by the county.

THEREFORE, IT IS MY OPINION:

A charter form of government may combine legislative and executive powers in the government's legislative body.

Sincerely,

JOSEPH P. MAZUREK  
Attorney General

jpm/msw/brf