

49 Op. Att'y Gen. No. 8

AIRPORTS - Creation of airport authority;
COUNTY COMMISSIONERS - Authority to appoint and/or remove airport commissioners;
EMPLOYEES, PUBLIC - County commissioners' authority to remove airport commissioners;
LOCAL GOVERNMENT - Creation of airport authority;
MUNICIPAL GOVERNMENT - Creation of airport authority;
MONTANA CODE ANNOTATED - Sections 7-1-201, 67-10-202, -301 to -303, 67-11-102.

HELD:

An airport authority commissioner may only be removed for cause during his or her term of appointment. "For cause" means some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their term of office.

August 23, 2001

Mr. George H. Corn
Ravalli County Attorney
Courthouse Box 5008
205 Bedford Street
Hamilton, MT 59840

Dear Mr. Corn:

You have requested my opinion concerning the following question:

Under what circumstances may a local governing body remove a member of an airport authority commission?

The legislative scheme for airport operation gives municipalities the option of running the airport themselves, creating an advisory board, or creating an airport authority. See Mont. Code Ann. §§ 67-10-202, 67-10-301 to -303, 67-11-102. A municipality may exercise any or all powers granted to an airport authority until or unless such powers are conferred upon the airport authority. Mont. Code Ann. § 67-11-102. Municipal airport authorities may be created by resolution by any municipality. Mont. Code Ann. § 67-11-102. For purposes of the above statute, a municipality includes a county. Mont. Code Ann. § 67-1-101(27).

Once created by resolution, a municipal airport authority is governed by not less than five persons appointed as commissioners of the authority. Mont. Code Ann. § 67-11-102. These five commissioners are appointed by the governing body of the municipality. Id.

Though no statute, case, or Attorney General's Opinion specifically addresses the issue of removal of an appointed commissioner from an airport authority, much case law exists on the subject. The common law rule has long been that in the absence of statutory provisions relating to removal of public officers, a public officer can be removed only "for cause, and he is entitled to notice and a hearing in order that he may have an opportunity to defend." State ex rel. Nagle v. Sullivan, 98 Mont. 425, 431, 40 P.2d 995, 996 (1935) (citations omitted.) Montana case law follows the general rule that if there is a definite term of appointment to a public office, as here, the appointee can only be removed "for cause." Id. Further, the statutes governing general county board management contain this rule. Mont. Code Ann. § 7-1-201(15) (members of the boards listed in Mont. Code Ann. § 7-1-202 may only be removed for cause).

In regard to removal of public officials, the Montana Supreme Court has defined "for cause" as meaning "for reasons which the law and sound public policy recognize as sufficient warrant for removal . . . that is legal cause . . . and not merely a cause which the appointing power, in the exercise of discretion, may deem sufficient." Sullivan, 40 P.2d at 998; State ex rel. Howard v. Ireland, 114 Mont. 488, 138 P.2d 569 (1943); State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P.2d 610 (1937). In general, "for cause"

implies some misconduct, neglect of duty, or inefficiency. See 63C Am. Jur. 2d, Public Officers and Employees §183. The Montana cases cited above involved misconduct (O'Hern) and, in essence, neglect of office (Ireland). To ensure that removal is not arbitrary, when a statute provides for an appointment for a definite term of office, removal may be effected only after notice and an opportunity to be heard. Ireland, 138 P.2d at 573.

This means that "for cause" does not include a discretionary exercise of statutory authority. Merely exercising the powers granted by statute does not constitute cause for removal of an airport commissioner. As long as the exercise of powers is lawful, a disagreement between the municipality and the airport authority over the wisdom of that exercise would not constitute sufficient "cause" for removal. Note that the municipality may exercise its statutory powers until they "have been conferred upon" an airport authority. Mont. Code Ann. § 67-11-102 (emphasis added). This unambiguous language makes it clear that, by creating the airport authority, the municipality has given up its powers in this area. Moreover, if municipalities wish to retain absolute authority over airports, they need only select one of the alternative forms of airport operation rather than creating an airport authority.

THEREFORE, IT IS MY OPINION:

An airport authority commissioner may only be removed for cause during his or her term of appointment. "For cause" means some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their term of office.

Very truly yours,

MIKE McGRATH
Attorney General

mm/pdb/dm