

VOLUME NO. 52

OPINION NO. 2

CITIES AND TOWNS - Term of office of person appointed to fill vacancy in the office of city judge;

CITY COURTS - Term of office of person appointed to fill vacancy in the office of city judge;

MUNICIPAL GOVERNMENT - Term of office of person appointed to fill vacancy in the office of city judge;

PUBLIC OFFICE - Term of office of person appointed to fill vacancy in the office of city judge;

STATUTORY CONSTRUCTION - Construing inconsistencies between general and particular provisions of the code;

MONTANA CODE ANNOTATED - Sections 1-2-102, 7-3-4462, (3), 7-4-4112, (1);

REVISED CODES OF MONTANA 1907 - Section 3236;

REVISED CODES OF MONTANA 1917 - Section 5470.

HELD: When a person is appointed to fill a vacancy in the office of city judge under a commission-manager form of city government, that person serves the remainder of the existing term.

May 3, 2007

Mr. Bruce Becker
Livingston City Attorney
414 East Callender Street
Livingston, MT 59047

Dear Mr. Becker:

[P1] You have asked my opinion on a question that I have restated as follows:

When a person is appointed to fill a vacancy in the office of city judge in a city of the second class that operates under the commission-manager form of government, when is the office up for election?

Your question requires the interpretation of two statutes.

[P2] Montana Code Annotated § 7-4-4112 is a general statute that provides for filling vacancies in municipal elected offices.

When first passed in 1903 this statute specified a manner of filling a vacancy “for any [municipal] elective office.” Rev. Codes Mont. 1907 § 3236. Although the statute was amended in 1981 and 1987, the statute’s broad language remains. The law currently states that

(1) When any vacancy occurs in any elective office, this position shall be considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified.

Mont. Code Ann. § 7-4-4112(1).

[P3] Montana Code Annotated § 7-3-4462 also addresses the issue of filling vacancies. This statute specifically focuses on the office of the city judge in a commission-manager municipality and the filling of a vacancy in that office. The statute was first enacted in 1917 as § 5470 of the Revised Codes of Montana. In its initial iteration the law consisted of one sentence: “The commission shall appoint a police judge, who shall have the power and authority now conferred by existing law.” The law made no mention of vacancy appointments. In 1977 the legislature completely revised the statute and addressed the issue of a vacancy. The revision deleted the then-existing statutory language. In its stead the legislature provided the following which remains the current law:

(1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

Mont. Code Ann. § 7-3-4462.

[P4] The answer to your question requires an analysis of these two statutes and a resolution of the conflicting provisions pursuant to the rules of statutory construction. One statute provides for a general method for dealing with vacancies in municipal elective offices. The other defines a procedure for one specific office that conflicts with the procedure set forth in the general statute.

[P5] Montana Code Annotated § 1-2-102 sets out the applicable rule: “In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” The Montana Supreme Court has consistently applied this principle and noted that “It is a well-settled rule of statutory construction that the specific prevails over the general. A particular statutory intent controls over a general one which is inconsistent with it.” Mont. Code Ann. § 1-2-102. “Further, when two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them.” State v. Smith, 2004 MT 191, ¶ 17, 322 Mont. 206, 212, 95 P.3d 137, 141.

[P6] Montana Code Annotated § 7-3-4462 is the more specific statute. It comprehensively addresses one municipal office. It provides for the term of office, the type of election that must be conducted, the qualifications for the office and the procedure for filling vacancies. The legislature expressly defined these requirements in this statute for one and only one office. And it did so at a time when the general statute already existed. The Supreme Court will “presume that the legislature would not pass meaningless legislation” State v McGowan, 2006 MT 163, ¶ 15, 332 Mont. 490, 494, 139 P.3d 841, 844. Montana Code Annotated § 7-3-4462(3) would be meaningless if the older, more general application of Mont. Code Ann. § 7-4-4112 were given effect.

[P7] The intent of the legislature must be followed. In 1977, when the legislature passed Mont. Code Ann. § 7-3-4462, the legislature intended to provide for a procedure for filling any vacancy that might arise in the office of the city judge in a commission-manager municipality. It did so knowing that a more general vacancy statute already existed in Montana law and it did so intending that Mont. Code Ann. § 7-3-4462 would be given meaning in its entirety.

[P8] THEREFORE, IT IS MY OPINION:

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When a person is appointed to fill a vacancy in the office of city judge under a commission-manager form of city government, that person serves the remainder of the existing term.

Very truly yours,

MIKE MCGRATH
Attorney General

mm/cdt/jym