

May 24, 2005

Ms. Cyndee L. Peterson
Hill County Attorney
County Courthouse
315 Fourth Street
Havre, MT 59501-3923

Dear Ms. Peterson:

You have requested an Attorney General's opinion on the following question, which I have rephrased as follows:

After consolidation and in order to ensure equitable representation on the school board, may a school district establish precincts or wards for school board elections and, if allowed, what procedure would govern the establishment of such precincts or wards?

Because there are statutory provisions that govern your question, it has been determined that a letter of advice is the appropriate response.

The provisions of title 20, chapter 6, parts 2 and 3 govern school district consolidation. Pursuant to Mont. Code Ann. § 20-3-301, all school district trustees must be elected. Mont. Code Ann. § 20-6-203(5) provides that after a consolidation proposition is approved, the county superintendent shall appoint the trustees for the consolidated district who will serve until their successors are elected at the next regular school election. Sections 20-3-341 and 20-3-351 govern the number of trustees to be elected. Those sections establish the number of trustees for elementary and high school districts.

Mont. Code Ann. § 20-20-102 provides, "[e]xcept as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13." The school election provisions of title 20 are silent as to whether wards or precincts may be utilized in the election of school district trustees. They do, however, provide that school elections will be conducted "in such a manner that ensures a fair and unbiased determination of the

matters put before the electorate and see that each elector has an adequate opportunity to cast his vote.”

Although your question references the creation of precincts or wards, the crux of your inquiry relates to equitable representation on the board of trustees after a school district has consolidated. The creation of a voting district, rather than a precinct or ward more directly addresses the issue of equitable representation.

Sections 20-3-352 and 20-3-353 indicate recognition by the legislature that equitable representation among the electorate of a school district is a valid consideration in the election of district trustees. Montana Code Annotated § 20-3-336 provides a way to address inequities in representation by establishing a procedure for the creation of single member districts. It provides:

- (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:
 - (a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and
 - (b) create single member trustee districts within the school district:
 - (i) ***if the board determines that the present trustee selection process does not serve the best interests of the electors of the district*** or to ensure the access of minority populations to the political process is not diluted in contravention of federal law; or
 - (ii) pursuant to a petition as provided in 20-3-337.

(Emphasis supplied.) While subsection (1)(a) contemplates a review of minority voting and population patterns, subsection (1)(b) sets forth the actual criteria for when a district may create a single member trustee district. It is not contingent solely on voting and population patterns of minorities. It provides two situations in which creation of a single member trustee district would be appropriate. The first being when the board determines that its present selection process does not serve the best interest of the voters of the district, and the second being when the board determines that a single member district would better ensure access to the political process by a minority group.

Thus, based on the plain language of Mont. Code Ann. § 20-3-336, if a board of trustees determines that its present trustee selection process was not in the best interest of the electors (for instance, if it finds the present selection process

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does not ensure equitable representation) it has the discretion to establish single-member trustee districts.

Mont. Code Ann. § 20-3-337 sets forth the process by which single-member trustee districts may be established. Specifically subsection (3) provides that if the board determines a single member trustee district is in the best interests of the voters, prior to establishing such a district, the board must: propose a plan for the creation of such a district; hold a public hearing on the proposed plan; and publish notice of the public hearing. After the public hearing the board must forward a copy of the plan to the secretary of state and office of public instruction for review and comment. After comments are received the board may revise, approve or disapprove the proposed plan.

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

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON
Assistant Attorney General

anb/jym