

August 18, 2005

Mr. Matt Pavlovich  
Hot Springs City Attorney  
P. O. Box 669  
Hot Springs, MT 59845-0669

Dear Mr. Pavlovich:

The former Hot Springs City Attorney, Ms. Lucy Darty, requested an opinion from the Attorney General regarding the status of the incorporated municipality of Hot Springs, Montana. Specifically, the question is rephrased as follows:

Given that the Town of Hot Springs voted to become incorporated over 80 years ago and has always operated as an incorporated local government, but failed to file incorporation papers with the Secretary of State's Office, 1) What is the town's current local government status, and 2) what steps should the Town take to rectify its corporate status?

Since your question is fact specific and can be answered by reference to clear statutory requirements, it has been determined that a letter of advice rather than a formal opinion is the appropriate vehicle for response to your inquiry.

Your question arises from a local government study that led to an erroneous inquiry regarding the current status of the municipality with the Secretary of State's Office. To the extent a challenge to the Hot Springs Incorporation arose because of the failure of the City of Hot Springs to file an incorporation with the Secretary of State's Office, there is absolutely no role for the Secretary of State's office in municipal incorporations. Quite simply put, the city did not fail to register its incorporated status with the Secretary of State's Office because there is no requirement to do so. While the Secretary of State handles business corporations, all valid municipal incorporations are undertaken solely under the direction of the counties under the "Organization and Incorporation of New Municipalities," part 41 of Title 7 Local Governments, Mont. Code Ann. § 7-2-4101, et seq.

In order to incorporate a new municipality, the statutory requirements that have been in place since enactment in 1887 require the following:

**7-2-4101. Petition to organize municipalities.** (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

(2)(a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain 50 or more registered electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the election administrator.

**7-2-4102. Census of proposed municipality.** Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board, and the same must be filed by it in the county clerk's office.

**7-2-4103. Prerequisites to organization of municipality.** No municipal corporation may be formed unless:

(1)(a) the number of inhabitants is 300 or upwards; or

(b) the community was a townsite owned and built by the U.S. government prior to April 3, 1981; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory.

**7-2-4104. Election on question of organization.** (1) After filing the petition and census, if there is the requisite number of inhabitants for the

formation of a municipal corporation as required in 7-2-4103, the county commissioners shall call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board. If possible, the election must be held in conjunction with a regular or primary election.

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13.

**7-2-4105. Notice of election on question of organization.** Notice of the election shall be published as provided in 13-1-108. The notice shall contain a description of the boundaries of the city or town.

Mont. Code Ann. § 7-2-4101 through -4105.

In preparing this letter of advice, I have reviewed the above referenced statutory requirements for the incorporation of a municipality under the laws of Montana and all documentation from the Sanders County Commissioners meetings during the period of incorporation. While it is beyond the scope of an opinion of this office to make factual findings, the documentation on its face appears to comply with statutory requirements. Moreover, the proceedings for incorporation are entitled to a rebuttable presumption of correctness. Ogle v. Ronan, 112 Mont. 394, 397, 117 P2d 257, 258 (1941). This letter of advice may not be viewed as a formal opinion of the Attorney General.

Yours truly,

CANDACE F. WEST  
Assistant Attorney General

c: Lucy Darty, Esquire