

December 20, 2005

Mr. Ken W. Hoversland
Daniels County Attorney
102 Second Avenue East
P.O. Box 455
Scobey, MT 59263-0455

Re: Clarification on Previous Letter of Advice

Dear Mr. Hoversland:

On December 12, 2005, I sent you a letter of advice regarding the former statute targeting the procedure for high school annexation. On December 14, 2005, I received a telephone call from you about that letter of advice. Upon review of the facts as you relayed them to me on the telephone, it is my opinion that your interpretation of the statute is correct.

The facts are as follows:

- Flaxville School District brought a resolution of annexation with assumption of bonded indebtedness to Scobey School District.
- A "sufficient number of electors" from Flaxville School District then brought a petition of annexation without assumption of bonded indebtedness to Scobey School District.
- Trustees of Scobey School District considered both the Flaxville resolution and the Flaxville petition, and accepted, by resolution, annexation without assumption of bonded indebtedness.

Montana Code Annotated § 20-6-422(2) states the following:

- (a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

- (i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or
- (ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of [Mont. Code Ann. §] 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

As you indicated, Flaxville School District, through its Trustees, brought a resolution, and voters of Flaxville School District also submitted a petition regarding annexation that differed from the resolution with respect to its treatment of the bonded indebtedness issue. Because they did so, you suggest that Scobey School District and Flaxville School District are in agreement on the issue of bonded indebtedness, based upon the following language.

The resolution from the annexing district and the **resolution or petition** from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be further considered.

Mont. Code Ann. § 20-6-422(3) (emphasis added).

It is my opinion that your interpretation of the statute is correct. Montana Code Annotated § 20-6-422(2) provides alternate methods for “introducing” an annexation question before the trustees of a potential annexing district--by resolution of the trustees or by petition of the voters. There is no suggestion in the statutes that the trustees of the district to be annexed play any role in the content of a petition from the voters, and therefore the statutes allow the possibility that a potential annexing district may receive a suggestion for annexation by both methods, as occurred here.

The reference to “resolution or petition” in Mont. Code Ann. § 20-6-422(3) suggests that if both a resolution and a petition “introduce” the annexation issue and the resolution and the petition differ with respect to the bonded indebtedness question, the statute provides the potential annexing district with the three options: (1) reject both the resolution and the petition; (2) pass a resolution authorizing the annexation election and adopting the approach to bonded indebtedness proposed in the resolution from the trustees of the district to be annexed (and necessarily rejecting the approach suggested by the petition); or (3) pass a resolution authorizing the annexation election and adopting the approach to

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bonded indebtedness proposed in the petition from the voters (and necessarily rejecting the approach suggested by the resolution). All that is required is that the issue has been “introduced” to the trustees of the potential annexing district by one of the two methods. Where, as here, both methods have been used, the potential annexing district may choose the approach to bonded indebtedness suggested by either introduction method, and whichever approach is chosen the “agreement” requirement of Mont. Code Ann. § 20-6-422(3) will have been met.

This letter of advice may not be viewed as a formal opinion of the Attorney General.

Sincerely,

JOSLYN M. HUNT
Assistant Attorney General

jmh/jym