

November 3, 2006

Mr. Kenneth S. Bell
Hamilton City Attorney
P.O. Box 210
Hamilton, MT 59840-0210

Dear Mr. Bell:

You have requested an opinion from this office regarding the interpretation of Mont. Code Ann. § 76-1-221(d), as relates to the appointment of members of a city planning board. Since your question may be answered by reference to the terms of the statute alone, it has been determined that a letter of advice rather than an official opinion is appropriate in response to your question.

The issue you pose arises from a perceived lack of clarity in Mont. Code Ann. § 76-1-221, which provides in pertinent part:

Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

....

Subsections (a) through (c) provide for single members appointed by the mayor subject to certain conditions, and their application is not questioned in your request. Subsection (d)

provides for the appointment of four citizen members who are “freeholders,” and specifies that two must reside within the city limits and two must reside in “the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter. . . .”

Your letter indicates that this latter classification has produced competing interpretations in your community. Under one interpretation, the language is read to require what seems the plain intention of the legislature: that the mayor appoint two members from outside the city limits. Under the other, based on the fact that there is by statute no “area . . . outside the city limits over which the planning board has jurisdiction,” the language is read to allow for the appointment of four members who reside within the city.

In my opinion the proper reading of the statute requires that the dependent clause “over which the planning board has jurisdiction under this chapter” be read to modify “city limits,” not “urban area, if any, outside of the city limits.” There is no provision in chapter 1 of Title 76 that allows a city planning board to exercise its jurisdiction outside its city limits.

The only other such authority of which I am aware is found in Mont. Code Ann. §§ 76-2-310 and -311, which authorize a city, under certain circumstances, to extend enforcement of its zoning regulations beyond the city limits. One of the requirements for such extension is that a city-county planning board be formed “or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected.” Mont. Code Ann. § 76-2-311(2). The two members are to be appointed by the county commissioners, and their “[r]epresentation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.” Id.

Clearly these additional city planning board members are not among the seven required by Mont. Code Ann. § 76-1-221, since § 221 provides for members appointed by the mayor, not the county commissioners, § 221 does not require the existence zoning regulations, let alone the intent to apply them extraterritorially, and § 221 contemplates permanent planning board positions, not temporary ones. And even ignoring all of these differences, the positions created to allow extraterritorial application of city zoning regulations are not found in chapter 1 of Title 76.

A statute must be read to give effect to the legislature’s intent, as found in statutory language, Delaware v. K-Decorators, Inc., 1999 MT 13, ¶ 30, 293 Mont. 97, 104, 973 P.2d 818, 823, to produce reasonable results, Clover Leaf Dairy v. State, 285 Mont. 380, 388-89, 948 P.2d 1164, 1169 (1997), and to give effect to all of its provisions if possible, Winchell v. Montana Department of Natural Resources and Conservation, 1999 MT 11, ¶ 20, 293 Mont. 89, 95, 972 P.2d 1132, 1136. The second interpretation

violates all of these rules. The legislature clearly intended that two members of a city planning board be freeholders who reside outside the city limits. If the dependent clause is read to modify “urban area, if any, outside of the city limits” the statute creates an impossibility, since the mayor could never appoint a resident from an area that does not exist in law. A reading of the statute that conflicts with this clear intention should be avoided. The legislature was presumptively aware of the other provisions of chapter 1, MacMillan v. State Compensation Insurance Fund, 285 Mont. 202, 207, 947 P.2d 75, 78 (1997) (legislature is presumed aware of other laws), and a construction of the statute that ignores the provision for appointment of members residing outside the city limits is not reasonable. Finally, the second interpretation reads the “urban area, if any, outside of the city limits” language out of the statute.

If the legislature had intended subsection (d) to allow the appointment of four members from within the city limits it could easily have said so directly. In my opinion the only reasonable reading of the statute is the first interpretation set forth above, under which the mayor appoints two freeholders residing within the city limits and two residing outside the city limits.

Any questions relating to the requirement that the members be “freeholders” are beyond the scope of our request, and I express no opinion on such questions. This letter of advice may not be construed as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym