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MT Local Government Review 2014

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1972 MONTANA CONSTITUTION ARTICLE XI SECTION 3



Article XI SECTION 3 Subsection (1)

The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. **The legislature shall provide such optional or alternative forms of government** that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

Article XI SECTION 3 Subsection (2)

One optional form of **county government** includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator.

Article XI SECTION 3 Subsection (2)

The terms, qualifications, duties, and compensation of those offices **shall be provided by law**. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

MONTANA CODE ANNOTATED

- The MCA is how the Montana Legislature carried out the directive found in the Montana Constitution to:
 - “provide such optional or alternative forms of government “

7-3-101. Compliance with constitution.

(1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government.

7-3-102 Adoption of alternative form.

Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

- (1) the **commission-executive** form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);
- (2) the **commission-manager** form (which may also be called the council-manager form);
- (3) the **commission** form;
- (4) the **commission-presiding officer** form;
- (5) the **town meeting** form; or
- (6) the **charter** form.

Local Government

- **Power**
 - General Power
 - Self-governing Power
- **Form**
 - commission-executive
 - commission-manager
 - commission form
 - commission-presiding officer form
 - town meeting form
 - charter form
- **Plan of Government**
 - Adopted suboptions

Local Government Powers

General Governing Power

- Can only exercise power and authority granted by law or constitution
 - Regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement
- 7-5-4104 MCA

Self-governing Power

- Can exercise any power or authority that is not prohibited by the constitution law or charter
 - DEQ Compliance
 - Local Option Tax

Article XI MT Constitution Section 4. General powers.

(1) A local government unit **without** self-government powers has the following **general powers**:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers **provided or implied by law**.
- (b) A county has legislative, administrative, and other powers **provided or implied by law**.
- (c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be **liberally construed**.

General Governing Powers

- In Montana, local governments with general powers have traditionally required a legislative delegation of authority to perform any governmental service or to alter their governmental structures and organizations.
 - During 2013 Legislative Session, 100 statutes were amended or added to Title 7 dealing with local government.
 - Title 7 is largest in the MCA and increased 22 pages in 10 years and is now 855 pages.

General Governing Powers

- Dillon's Rule
- 1872 Judge John F. Dillon, Iowa
 - Municipal corporation can exercise the following powers and no others:
 - Those granted in express words
 - Those necessarily or fairly implied in or incident to the powers expressly granted
 - Those essential to the declared objectives and purposes of the corporation – not simply convenient, but indispensable

General Governing Powers

- 1887 Supreme Court of the Montana Territory held that municipal corporations had no inherent right of local self-government

Self-governing Powers

- As set forth in Section 6, Article XI of the 1972 Montana Constitution
 - **Section 6. Self-government powers.** A local government unit adopting a self-government charter *may exercise any power not prohibited by this constitution, law, or charter.*

Examples of Self-Governing Powers

- Providing additional services not permitted by the legislature
- Lawfully acquire and operate utilities (gas, electric) within and outside the boundaries of its jurisdiction
- Greater authority to dispose of public lands
- Implement local development fees

7-1-105. State law applicable until superseded.

- All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

Montana Code Annotated

- Local Government
- MCA Title 7 Local Government
- Chapter 3 Alternative Forms of Government
- Part 1 – 7

The Plan of Government

- MCA Title 7 Local Government
- Chapter 3 Alternative Forms of Government
- 7-3-113 and 7-3-201 through 7-3-224
- Default general statutes for **Commission - Executive form of government**

The Recipe

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977, by the following sections:

- (a) 7-3-201;
- (b) 7-3-202(1);
- (c) 7-3-203;
- (d) 7-3-212(2);
- (e) 7-3-213(3);
- (f) 7-3-214(2);
- (g) 7-3-215(2);
- (h) 7-3-216(2);
- (i) 7-3-217(1);
- (j) 7-3-218(2);
- (k) 7-3-219(1);
- (l) 7-3-220(1);
- (m) 7-3-221(3);
- (n) 7-3-222(2);
- (o) 7-3-223(2).

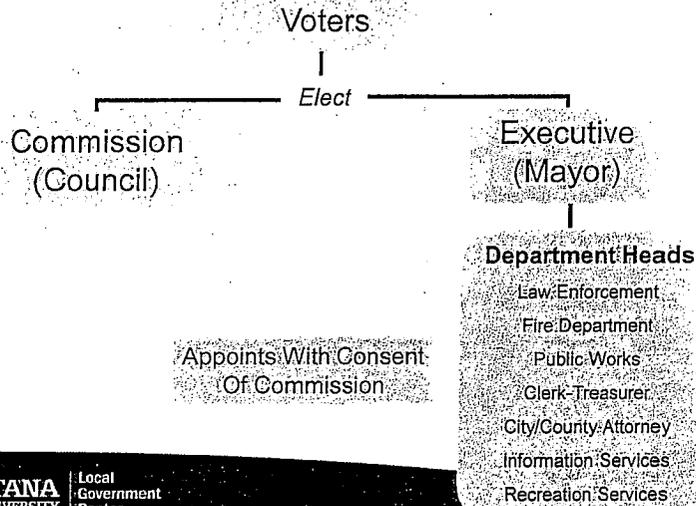
(k) 7-3-219(1)

7-3-219. Type of election. Local government elections shall be conducted on a:

- (1) **partisan basis**; or
- (2) **nonpartisan basis.**

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

Typical Organizational Chart of Commission-Executive



Commission-Executive

- The Executive
 - Mayor or Chief-Executive
 - Elected at large to four year terms
 - Enforces state law, local ordinances
 - policies and resolutions adopted by council
 - Presiding officer
 - Breaks a tie and veto power
 - Appoints Department Heads and board members
 - Prepares budget
 - Develops the agenda

Commission-Executive

- The Commission or Council
 - Governing and policy-making body
 - Creates ordinances, policies and resolutions
 - Not less than 3 members
 - Overlapping 4 year terms
 - Elected from wards on a partisan basis
 - Power to override veto (2/3 vote)
 - Consents to departments heads and boards
 - Adopts budget

Commission-Executive

- Relies heavily on cooperation between the Executive and Commission
- Efficiency and innovation can be compromised and result in paralysis when the two governing bodies do not work as a team
- Role clarity and formalized procedures ensure a greater degree of efficiency than relying on harmony (one election away from disaster)

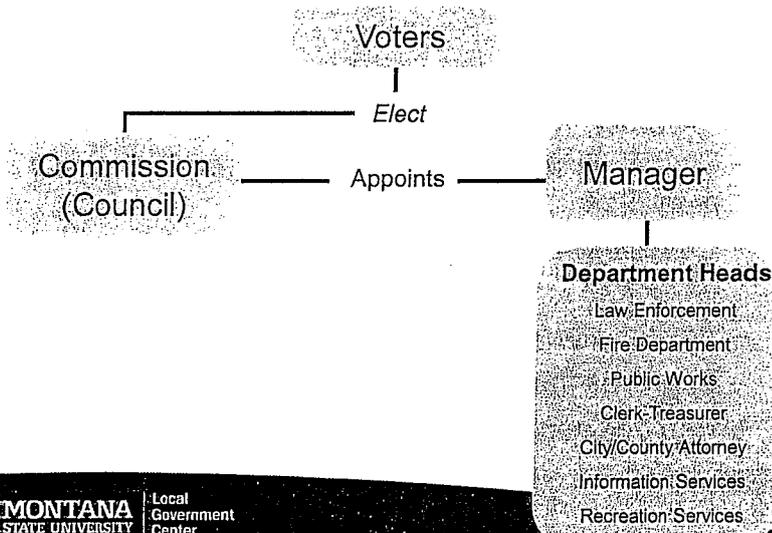
7-3-114. Statutory basis for municipal commission-manager government.

(1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

- (a) 7-3-301;
- (b) 7-3-302(1);
- (c) 7-3-303;
- (d) 7-3-304;
- (e) 7-3-305;
- (f) 7-3-312(3);
- (g) 7-3-313(1);
- (h) 7-3-314(2);
- (i) 7-3-315(2);
- (j) 7-3-316(2);
- (k) 7-3-317(2);
- (l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

Typical Organizational Chart of Executive Manager



Commission-Manager

- Executive (manager)
 - Hired by and serves at the pleasure of the commission - like a “CEO”
 - Responsible for administration of all departments and services of the city
 - Sole responsibility to enforce the law, supervise employees and prepares the budget
 - Prepares the commission agenda

Commission-Manager

- Commission
 - Serves like a “board of directors”
 - Set goals makes policy
 - Cannot dictate the appointment or removal of any employee
 - Cannot give orders to any employee either publicly or privately
 - Appoints boards
 - Approves the budget
 - Non partisan, alternating 4-year terms

Elected County Official Government

- “Traditional” or “Constitutional” Form
- Existing form pre 1974-76 Voter Review
- Vote for Existing Form or Alternative Form
- If an alternative form has never been chosen or changed during previous voter reviews, then the current form is still the ECOG

Commission

- May also be called the Council
- All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission.

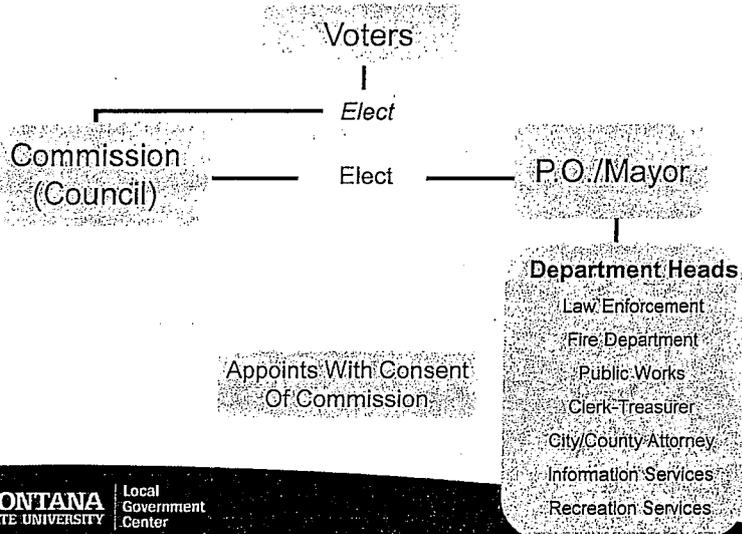
Commission

- The presiding officer may be referred to as the mayor.
- All members of boards and committees must be appointed by the presiding officer with the consent of the commission.
- The presiding officer must be recognized as the head of the local government unit and may vote as other members of the commission.

Commission

- The presiding officer is elected by the commission.
- Term established by ordinance

Typical Organizational Chart of Commission-Presiding Officer



Commission-Presiding Officer

- Commission or council is elected by the voters
- Commission then elects a Presiding Officer (who also may be referred to as a mayor or as president) from their own ranks
- Serves at the pleasure of the commission

Commission-Presiding Officer

- Presiding Officer
 - Presiding officer of the council and chief executive of local government
 - Power to vote as other members of council
 - Enforces laws, ordinances and resolutions
 - Administers the affairs of local government
 - Direct, supervise and administer all departments, agencies and offices of local government

Commission-Presiding Officer

- Presiding Officer
 - Carry out policies established by council
 - Prepares the council agenda
 - Recommends measures to the council
 - Reports to council on the affairs and financial condition of the local government
 - Executes budget
 - Appoints with consent of council all members of boards and committees

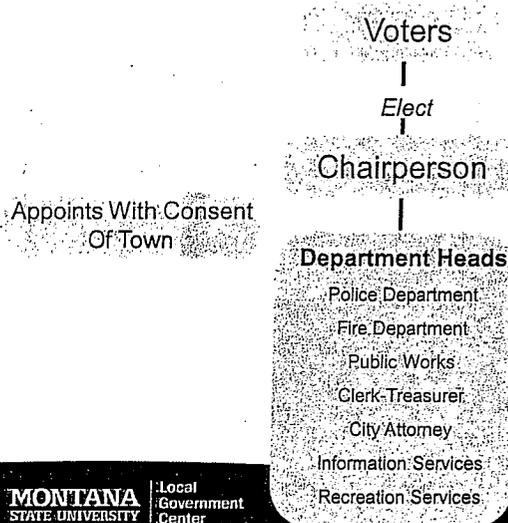
Commission-Presiding Officer

- Presiding Officer (continued)
 - Appoint with consent of council all department heads and may remove department heads and may remove and appoint all other employees
 - Exercises control and supervision over the administration of departments and boards
 - Prepares budget and presents it to the commission

Commission-Presiding Officer

- Commission
 - Governing and policy-making body
 - Creates ordinances, policies and resolutions
 - Not less than 5 members
 - 4 year terms
 - Elected from wards on a partisan basis
 - Consents to departments heads and boards
 - Adopts budget

Typical Organizational Chart of Town Meeting



Town Meeting

- Direct democracy rather than representative democracy - all legislative powers are vested with the town
- Communities less than 2,000 residents
- No elected council to represent the interest of the community
- Citizens represent themselves in at least one annual meeting (1st Tuesday of March) to make policy decisions
- A quorum consists of at least 10% of the qualified electors
- Elect a town chairperson to carry out policy

Town Meeting

- Presiding Officer
 - Chief executive officer of the town
 - Prepares the town meeting agenda
 - Enforces laws, ordinances and resolutions
 - Recommends measures to the town meeting
 - Prepare the budget and present to the town for approval
 - Reports to the town on the affairs and financial condition of the town
 - Appoint, with consent of town meeting members all boards and appoint and remove all employees of the town
 - Specifically limited administrative powers sufficient to carry out day-to-day operation

Town Meeting

- Town moderator
 - The town can elect a town meeting moderator for the term of 1 year
 - Shall be the presiding officer at the town meeting
 - Has no governing powers

What is a Charter?

- A charter is the local government equivalent of a state or national constitution
- Approved by the voters within its jurisdiction

What is a Charter?

- Defines local government's
 - Powers
 - Structures
 - Privileges
 - Rights
 - Duties
 - Limitations
- Written Plan of Government

Montana Charters

- 129 Montana Municipalities
 - 32 Operate with Charters
- 56 Montana Counties
 - 3 Operate with Charters

Written Plan of Government

- Montana Charters **must** include:
 - An elected legislative body of qualified electors
 - Number of members
 - Terms of office
 - Elections are partisan or non-partisan
 - Districted or at-large
 - Grounds for removal
 - Method of filling vacancies

Written Plan of Government

- Montana Charters **must** include:
 - An elected or appointed chief-executive
 - Term of office if elected or at the pleasure of the governing body if appointed
 - Powers and duties of the chief-executive
 - Grounds for removal from office
- Could provide for a plural executive drawn from the legislative body

Written Plan of Government

- A charter **may** specify:
 - Any additional officers, departments, boards, commissions, agencies as desired
 - Any limitations or prohibitions on the governing body's exercise of self-governing powers
 - Other provision as long as they are not contrary to the constitution or law

Written Plan of Government

- A local charter **may not** include:
 - Provisions conflicting with state law establishing prohibitions or limitations on the powers of self-governing units of local government
 - Provisions establishing elections, initiatives or referendum procedures
 - Provisions establishing or modifying local court systems

Written Plan of Government

- Charters may only be amended with voter approval, as required by state law.
- Every charter **must** adopt **self-governing powers**
- However, every community that has **self-governing powers** does not need to adopt a Charter