

Klarryse Murphy

From: Klarryse Murphy
Sent: Monday, March 14, 2016 11:23 AM
To: 'Alan Thompson'; 'George Corn'; 'Marilee Shockley'; 'Scott Boulanger (elkhunter1964@gmail.com)'; 'Sharon Schroeder'
Subject: HIGH IMPORTANCE RE: BALLOT LANGUAGE (1 OF 3)
Importance: High

There are two more e-mails to follow.

From: Regina Plettenberg
Sent: Monday, March 14, 2016 11:17 AM
To: Klarryse Murphy <kmurphy@rc.mt.gov>
Subject: FW: Agenda for March 16 LGSC meeting

Klarryse,

I am going to forward you some emails from the Secretary of State's office and MACo. There is some concern over the study commission's ballot language. The study commission actually adopted their final report last week and gave to me. I am not sure if this week they want to amend their agenda to be able to consider these concerns or not.

Regina Plettenberg

Clerk & Recorder/Election Administrator/
Superintendent of Schools
215 S 4th St, Suite C
Hamilton, MT 59840
406-375-6555
recorder@rc.mt.gov



From: Howard Recht
Sent: Monday, March 14, 2016 11:05 AM
To: Regina Plettenberg <rplettenberg@rc.mt.gov>
Subject: RE: Agenda for March 16 LGSC meeting

Well, that's a bit of a dilemma. If the commission has issued a final report I don't know what the agenda item means, unless the commission intends to issue an amended final report? If the commission intends to do that, or if it intends to reconsider the ballot language, the agenda should reflect that.

Howard

From: Regina Plettenberg
Sent: Monday, March 14, 2016 10:58 AM
To: Howard Recht
Subject: RE: Agenda for March 16 LGSC meeting

Because they already signed the final report and gave it to me last week. So do I not consider it done yet?

Regina Plettenberg

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RAVALLI COUNTY
ELECTIONS

From: Klarryse Murphy
Sent: Monday, March 14, 2016 9:50 AM
To: Regina Plettenberg <rplettenberg@rc.mt.gov>
Subject: Agenda for March 16 LGSC meeting

Klarryse L. Murphy, CPA
Chief Financial Officer
Ravalli County
215 S. 4th Street, Suite B
Hamilton, MT 59840
406-375-6524



Klarryse Murphy

From: Klarryse Murphy
Sent: Monday, March 14, 2016 11:24 AM
To: 'Alan Thompson'; 'George Corn'; 'Marilee Shockley'; 'Scott Boulanger (elkhunter1964@gmail.com)'; 'Sharon Schroeder'
Subject: HIGH IMPORTANCE RE: BALLOT LANGUAGE (2 OF 3)

From: Regina Plettenberg
Sent: Monday, March 14, 2016 11:17 AM
To: Klarryse Murphy <kmurphy@rc.mt.gov>
Subject: FW: Local govt study ballot questions

Regina Plettenberg

Clerk & Recorder/Election Administrator/
Superintendent of Schools
215 S 4th St, Suite C
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recorder@rc.mt.gov



RAVALLI COUNTY
ELECTIONS

From: Kimmet, Lisa [<mailto:LKimmet@mt.gov>]
Sent: Monday, March 14, 2016 8:11 AM
To: Regina Plettenberg <rplettenberg@rc.mt.gov>
Subject: FW: Local govt study ballot questions

Good Morning Regina – I saw your ballot questions last week from the local government study commission, and sent the email below to Harold Blattie at MACo, because I had never heard of making local offices partisan or non-partisan on an office by office case. Not sure if the study commission ran their questions by the county attorney, but we would recommend that they do that, and perhaps visit with MACo as well. Let me know if you want to discuss further, and happy Monday???

Lisa Kimmet, Deputy
Elections and Government Services Division
Office of Montana Secretary of State Linda McCulloch
406.444.5376
www.sos.mt.gov



From: Harold Blattie [<mailto:hblattie@mtcounties.org>]
Sent: Friday, March 11, 2016 5:46 PM
To: Kimmet, Lisa
Subject: RE: Local govt study ballot questions

Short answer is no. All elected offices must be partisan or non-partisan. More later

Harold Blattie, Executive Director
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hblattie@mtcounties.org
www.mtcounties.org

From: Kimmet, Lisa [LKimmet@mt.gov]
Sent: Friday, March 11, 2016 4:27 PM
To: Harold Blattie
Subject: Local govt study ballot questions

Harold – please see the ballot questions below from the Ravalli County local government study commission. Is it possible under any county structure to have some county elected offices partisan or non-partisan, and others not? I copied the statutes I could find that seemed a little relevant. Any thoughts?

7-3-413. Type of election. Local government elections shall be conducted on a:
(1) partisan basis; or
(2) nonpartisan basis.

7-3-192. Election on recommendation. (1) An alternative form or plan of government recommended by a study commission must be submitted to the voters in the same manner as provided in [7-3-149](#).
(2) Ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in [7-3-150](#) and [7-3-151](#).

Ravalli County Study Commission

OFFICIAL BALLOT ON AMENDMENTS TO CURRENT FORM OF GOVERNMENT

PLEASE VOTE ON ALL ISSUES

QUESTION # ONE – The NUMBER OF SEATS on the Ravalli County Board of Commissioners shall be:

Vote for one

For the adoption of three (3) total seats on the Ravalli County Board of Commissioners, as recommended by the Ravalli County Study Commission.

Retain the existing five (5) total seats on the Ravalli County Board of Commissioners

QUESTION # TWO – The TERMS OF OFFICE on the Ravalli County Board of Commissioners shall be:

Vote for one

For the adoption of six (6) year terms of office for the Board of County Commissioners, as recommended by the Ravalli County Study Commission.

Retain the existing four (4) year terms of office.

QUESTION # THREE – The REPRESENTATION of the election of the Ravalli County Board of Commissioners shall be:

Vote for one:

Retain the existing voting of all candidates at-large, as recommended by the Ravalli County Study Commission.

For the adoption of voting only for the candidates within your voting District.

QUESTION # FOUR – The TYPE of ELECTION of the Ravalli County Board of Commissioners shall be:

Vote for one:

Retain the existing partisan elections, as recommended by the Ravalli County Study Commission.

For the adoption of non-partisan elections.

QUESTION # FIVE – The TYPE of ELECTION of the Offices OTHER than the Board of Commissioners shall be:

Vote for each:

SHERIFF/CORONER:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

COUNTY ATTORNEY:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

TREASURER:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

CLERK OF THE COURT:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

CLERK & RECORDER:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

PUBLIC ADMINISTRATOR:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

Lisa Kimmet, Deputy

Elections and Government Services Division

Office of Montana Secretary of State Linda McCulloch

406.444.5376

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Klarryse Murphy

From: Klarryse Murphy
Sent: Monday, March 14, 2016 11:24 AM
To: 'Alan Thompson'; 'George Corn'; 'Marilee Shockley'; 'Scott Boulanger (elkhunter1964@gmail.com)'; 'Sharon Schroeder'
Subject: HIGH IMPORTANCE RE: BALLOT LANGUAGE (3 OF 3)
Importance: High

From: Regina Plettenberg
Sent: Monday, March 14, 2016 11:17 AM
To: Klarryse Murphy <kmurphy@rc.mt.gov>
Subject: FW: Local govt study ballot questions

Regina Plettenberg

Clerk & Recorder/Election Administrator/
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215 S 4th St, Suite C
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From: Kimmet, Lisa [<mailto:LKimmet@mt.gov>]
Sent: Monday, March 14, 2016 8:15 AM
To: Regina Plettenberg <rplettenberg@rc.mt.gov>
Subject: FW: Local govt study ballot questions

Below is Harold's more in depth analysis of the form of government ballot questions.

Lisa Kimmet, Deputy
Elections and Government Services Division
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From: Harold Blattie [<mailto:hblattie@mtcounties.org>]
Sent: Saturday, March 12, 2016 7:42 AM
To: Kimmert, Lisa
Cc: Brian Hopkins
Subject: RE: Local govt study ballot questions

Lisa,

Some random thoughts.....

Basis to start from is that Ravalli County Operates under the Commission form of government as authorized and controlled by Title 7, Chapter 3, Part 4 MCA. That part places some limitations on the options available for the plan of government under that form.

The scope of a Study Commission's recommendations is in 7-3-185.

7-3-185. Scope of study commission recommendations. (1) (a) A study commission examining the government of a county may:

- (i) recommend amendments to the existing plan of government;***
 - (ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;***
 - (iii) draft a charter;***
 - (iv) recommend municipal-county consolidation or amendments to an existing consolidation;***
 - (v) in cooperation with a study commission in an adjoining county, recommend county merger; or***
 - (vi) submit no recommendation.***
- (Balance of section omitted as not relevant)***

The applicable Part is Part 4 - Commission Form of Government.

That Part provides options that can be chosen which then establishes the "Plan" of government. The current Plan of Government, adopted by the voters in 2006 is that Ravalli has five commissioners, partisan elections, at large elections, overlapping terms and four year terms for all officials including commissioners.

The essence of the proposal being considered would let the voters choose to retain five commissioners or go back to three, retain four year terms or go back to six, retain voting at large of voting by district, then goes on to list each elected office with retention of partisan elections or adopting non partisan elections for each office independent of each other. I believe that is where the wheels fall off the wagon.

The elections must be submitted to the voters in the same manner as provided in 7-3-192. That section then controls the ballot language by reference to 7-3-150 AND 7-3-151.

First, it can be argued that the proposed ballot language does not conform to the requirement in 7-3-151 because ballot questions 3 and 4 reverse the order by placing "Retain the existing....) BEFORE "Adoption of.....". While that may appear to some to be insignificant, I would argue that is significant because voters would go down the ballot with all of the other options having "For adoption....) first in order but those two questions being reversed. I believe this would cause voter

confusion and someone with even a little paranoia would think that was being done to influence unsuspecting voters' votes. I think 7-3-150 speaks for itself in the language that must be used, including the order of the questions to adopt or retain.

7-3-192. Election on recommendation. (1) *An alternative form or plan of government recommended by a study commission must be submitted to the voters **in the same manner as provided in 7-3-149.***

(2) *Ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission **must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.***

7-3-150. General ballot requirements. (1) *The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:*

Vote for one:

FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

FOR the existing form of government.

(2) *The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.*

Section 7-3-192 also REQUIRES that the election conform to 7-3-151. **That section strictly limits the number of "options" that can be presented to voters to THREE** and each can have no more than two suboptions. In my opinion, the Study Commission cannot submit the proposed cafeteria of choices. It will be necessary for them to consolidate or eliminate some of the questions.

An example would be to propose three commissioners with six year overlapping terms or to retain the current five commissioners with four year terms. I have some concern about doing this, which I will discuss later.

It may be possible to go as far as proposing three commissioners, elected at large with six year terms, however I would hasten to point out that does not accomplish anything, nor is it necessary because they already have overlapping terms so if the ballot is silent obviously the overlapping terms would continue.

7-3-151. Treatment of suboptions for proposed alternative forms. (1) *A petition recommendation may not involve more than three separate suboptions, and a **suboption may not contain more than two alternatives.** If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.*

(2) *A proposed change of the form of government or change in a plan of government must be submitted to the voters as a single question, except that the suboptions within the form of local*

government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption **must be submitted to the electors in substantially the following form:**

Vote for one:

A legal officer (who may be called the "county attorney"):

[] To be elected for a term of 4 years.

[] To be appointed for a term of 4 years by the presiding officer of the local governing body.

Now lets look specifically look at the language in Part 4. That section provides the "menu" of options that can be voted on, which then establishes the Plan of Government. Section 7-3-411 requires that one option from each choice listed in 7-3-412 through 7-3-418 be included.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including **one item from each of the choices listed in 7-3-412 through 7-3-418.**

In my opinion, that does not mean they have to put each of the suboptions on the ballot, only those that propose a change. For example they currently have commission members elected at large. If that is not placed on the ballot to change to concurrent terms then overlapping terms continue.

Section 412 provides for the option to have overlapping or concurrent terms.

Section 413 provides for partisan or non-partisan elections, which I believe is the crux of your question.

7-3-413. Type of election. Local government elections shall be conducted on a:

(1) *partisan basis; or*

(2) *nonpartisan basis.*

In my non-legal opinion, placing the question of partisan or non-partisan as a separate question for each office is about the most tortured interpretation of that section that someone could come up with. By asking that question separately for each office that brings the total number of questions being proposed to ten in reality, even though they are trying to make each office a sub-option to question #5.

In the history of Study Commissions, no Study Commission has ever done that or to the best of my knowledge even considered doing that. The annotations only show a minor language change in 1983 so there are no applicable AG Opinions, nor is there any Case Law to provide guidance.

I believe the County Attorney will ultimately have to issue an Opinion on this.

While the Study Commission may have the best of intentions in placing all of these various options in the ballot, I do not believe it can be done and that they need to consolidate the topics into three questions, which based upon my understanding after discussions over the past couple years with quite a few Ravalli County officials and residents could be framed as follows:

QUESTION # ONE – The NUMBER OF SEATS on the Ravalli County Board of Commissioners shall be:

.Vote for one

For the adoption of three (3) total seats on the Ravalli County Board of Commissioners, as recommended by the Ravalli County Study Commission.

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QUESTION # TWO – The TERMS OF OFFICE on the Ravalli County Board of Commissioners shall be:

Vote for one:

For the adoption of six (6) year terms of office for the Board of County Commissioners, as recommended by the Ravalli County Study Commission.

Retain the existing four (4) year terms of office.

QUESTION # ~~FOUR~~ THREE – The TYPE of ELECTIONS ~~of the Ravalli County Board of Commissioners~~ shall be:

Vote for one:

For the adoption of non-partisan elections.

Retain the existing partisan elections, as recommended by the Ravalli County Study Commission.

NOTE: I placed the "For Adoption" first to conform with the requirements of 7-3-150. I believe "For" has to be placed first in order with "Retain" following.

If they are adamant about including voting at large or voting by district they may be able to consolidate that into Question #1, however I have some concern doing so would violate the "one question" principle.

I use the term "principle" because there is no specific controlling statute that I am aware of for that would apply to this election. The one-question limit is found in the Montana Constitution in Article XIV, Section 11, which prohibits a ballot question that amends more than one part of the Montana Constitution. The Single Subject principle is also found in 7-5-132(4)(a) which applies to a referendum referred to the voters by a Local Government to a single subject. That aspect needs to be considered by an attorney.

The same concern would be present for consolidating the question of changing to three commissioners with them being elected by district because that really is two questions. If it was presented as three commissioners elected at large, all that would do is confuse voters so there would be no purpose in including the at large language because that is what they already have so, in my opinion, silence may be better.

While the Study Commission's proposal may be noble and have the best of intentions to give the voters a menu of options, I believe they will have to limit those options to three proposals and that partisan/non-partisan has to apply to all offices, not each office separately.

The questions require legal answers, which I cannot provide so am offering this as information that I

believe should be considered. If the ballot does contain all of the proposals, I think it is at great risk of having everything thrown out in court, rendering the efforts of the Study Commission worthless. I think the essence of what I have heard is that people want to go back to three commissioners with six year overlapping terms and want to consider having non-partisan elections. All of that can easily be put on the ballot as three questions, and done in a manner that would most-likely withstand the scrutiny of the courts.

I am sure I have created more questions than I have answered but the questions/concerns I have expressed should be answered sooner than later.

Harold

Harold Blattie, Executive Director
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www.mtcounties.org

From: Kimmet, Lisa [LKimmet@mt.gov]
Sent: Friday, March 11, 2016 4:27 PM
To: Harold Blattie
Subject: Local govt study ballot questions

Harold – please see the ballot questions below from the Ravalli County local government study commission. Is it possible under any county structure to have some county elected offices partisan or non-partisan, and others not? I copied the statutes I could find that seemed a little relevant. Any thoughts?

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(1) partisan basis; or
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For the adoption of non-partisan elections.

QUESTION # FIVE – The TYPE of ELECTION of the Offices OTHER than the Board of Commissioners shall be:

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SHERIFF/CORONER:

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Retain the existing partisan elections.

COUNTY ATTORNEY:

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TREASURER:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

CLERK OF THE COURT:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

CLERK & RECORDER:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

PUBLIC ADMINISTRATOR:

For the adoption of non-partisan elections, as recommended by the Ravalli County Study Commission.

Retain the existing partisan elections.

Lisa Kimmet, Deputy

Elections and Government Services Division

Office of Montana Secretary of State Linda McCulloch

406.444.5376

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Klarryse Murphy

From: Alan and Pat Thompson <cobbler380@yahoo.com>
Sent: Monday, March 14, 2016 3:34 PM
To: scott@scottboulanger.com; Klarryse Murphy; Sharon Schroeder; Marilee Shockley; George Corn
Subject: Maco e-mails

Greetings,

I am sure you have each read the response from MACo in regards to our final report. I have met with both Klarryse and Regina and changed the agenda for Wednesdays meeting so we can discuss amending the final report. Regina says she is OK with us amending and getting the ballot language to her on Wednesday, but we need to get it done asap. I will not review MACo's information but ask each of you to do so and come to the meeting ready to talk about revision if necessary. I have a call into Harold Blattie at MACo but he has not gotten back to me at this time. Hopefully I will have talked to him before Wednesday. We will have to change some of the ballot language to conform to Montana Code 7-3-150. I apologize for missing that section and should have noticed it. The main question again will be about partisan versus non-partisan and how it will appear on the ballot.

Alan

Klarryse Murphy

From: Sharon Schroeder <jimandsharon.schroeder@gmail.com>
Sent: Tuesday, March 15, 2016 9:39 AM
To: Harold Blattie
Cc: George H. Corn; Marilee Shockley; Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles; Howard Recht; Brian Hopkins
Subject: Re: Maco e-mails

Having just read this email for the first time I will throw something out for consideration as I don't want to see all of our work invalidated by a court of law.

Harold mentions presenting only 3 questions to the voters. If we drop the partisan/non partisan questions we present voters with the most important issue we heard - 3 versus 5, as well as length of term (important) and district/at large (whose supporters dwindled throughout the year). As Harold points out, the transition of 4 years can cause problems, and we have seen that.

I seriously do not want to see the main thrust of our work cast aside and have to wait 10 more years to ask voters if they want 3 or 5 Commissioners. Perhaps that should be our only question.

As Dan Clark said, the wheels of government turn slowly.

See you all tomorrow.

Sharon

Sent from my iPhone

Klarryse Murphy

From: Brian Hopkins <bhopkins@mtcounties.org>
Sent: Tuesday, March 15, 2016 1:51 PM
To: 'Howard Recht'; Harold Blattie; George H. Corn; 'Sharon Schroeder'; Marilee Shockley
Cc: Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles
Subject: RE: Maco e-mails

I'm fine with that. With all the addressees, I did not think there was anything which was privileged or attorney work product, etc.

Brian Hopkins

From: Howard Recht [mailto:hrecht@rc.mt.gov]
Sent: Tuesday, March 15, 2016 1:10 PM
To: Brian Hopkins; Harold Blattie; George H. Corn; 'Sharon Schroeder'; Marilee Shockley
Cc: Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles
Subject: RE: Maco e-mails

Just as a reminder, copies of these emails that have been circulating among the members of the study commission should be acknowledged at the next public meeting and included as part of the record for public comment prior to final action.

Howard F. Recht

From: Brian Hopkins [mailto:bhopkins@mtcounties.org]
Sent: Tuesday, March 15, 2016 12:58 PM
To: Harold Blattie; George H. Corn; 'Sharon Schroeder'; Marilee Shockley
Cc: Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles; Howard Recht
Subject: RE: Maco e-mails

Good afternoon,

Since Harold has dropped my name into the conversation, I guess I should put in my two cents worth. In the interest of full disclosure, I admit that I really didn't get pulled into this discussion until Sunday afternoon, so I suspect Howard and probably George have put a lot more thought and time into this than I have.

First, I do agree with George that more than three suboptions can be considered if a study commission is providing the recommendations. If you look at MCA Title 7, Chapter 3, Parts 2-5, all of the alternative forms of government proposed contemplate that a variety of specified suboptions "shall" be considered. For example, under MCA Section 7-3-411, one item from each of the options under paragraphs 7-3-412 through 7-3-418 shall be included in the proposal. Under Harold's interpretation, perhaps four of the options could be combined into the proposed alternative and three suboptions could be put on the ballot. But I think that would violate the general ballot standard under MCA Section 7-3-150 by introducing a cumbersome proposed alternative. The other choice would be to ignore some of the suboptions, but that runs against the language that the specified suboptions "shall" be included. So I believe the most reasonable way to interpret the language in MCA Section 7-3-151 limiting the number of suboptions to three is to confine it to those situations where the proposed change in form of government is introduced by petition, pursuant to MCA Section 7-3-125.

Harold also correctly points to the seemingly contradictory language in MCA Section 7-3-192(2), which states as follows:

(2) Ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.

I haven't looked at much of the legislative history, but I view the language in 192(2) as referring to procedures related to general balloting requirements and the rotation of the ballot language so that an equal number of ballots list the existing plan and proposed plan first. I don't see 192(2) as supplanting the separate limitation on suboptions related to proposals brought forward by petition.

Finally, I do believe that either all or none of the elected offices should be determined on a partisan basis. The additional suboptions listed under MCA Section 7-32-432 through 442 provide six different ways for those offices to be filled, but none of them are on a partisan/nonpartisan basis. So while Howard expresses some misgivings about whether that was Constitutional intent, I think the plain, unadorned language of MCA Section 7-3-413 states that local government elections shall be conducted on a partisan or nonpartisan basis, with no exceptions or equivocation in the statutory language. Then MCA Section 7-3-431 states that the plan of government submitted to the voters shall "further define" how those offices will be filled. By this point, the partisan/nonpartisan issue has already been decided, and the election option is simply one of six options for filling those offices.

As Harold points out, this is ultimately a decision for the County Attorney. My function is to provide support on personnel issues and act as General Counsel for MACo. Since I have a background in local government, I am also available as a resource for County Attorneys, but my role is not to supplant them or direct a course of action (except to a limited extent on employee discipline).

So I hope the above is a helpful perspective, but Howard and his Boss have the final say on these issues.

Brian Hopkins
MACo General Counsel
(406) 441-5473 (o)
(406) 431-1701 (c)

From: Harold Blattie
Sent: Tuesday, March 15, 2016 8:24 AM
To: George H. Corn; 'Sharon Schroeder'; Marilee Shockley
Cc: Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles; 'Howard Recht'; Brian Hopkins
Subject: RE: Maco e-mails

George,

Good to hear from you again. You present an alternate reading of that section of law that certainly needs to be considered. I appreciate you sending Howard's memo. I have no disagreement with his conclusions and as he points out there is very little guidance available about the interpretation of the subject section of law. MACo consistently takes the more conservative interpretation and will leave it to county attorney offices to arrive at more liberal interpretations.

To be clear, the ultimate decision on what to place on the ballot lies with the Study Commission. I

am attempting to bring up concerns that I feel may be problem areas in what is being presented. When I look at the history of Study Commission alternatives being presented to the voters, they actually have a very poor track record of being approved and I also have observed over time that simplicity is best when anything is presented to the voters because they tend to vote no on anything they do not understand.

I forwarded your response to Brian Hopkins, MACo General Counsel and he responded to me that he believes your interpretation may be correct. So now I get to debate with both of you!!!!

Before I give up on placing more than three options on the ballot, I will reiterate that 7-3-192 (2) states that the ballot requirements on the recommendations of the Study Commission must be the same as for recommendations by petition:

7-3-192. Election on recommendation. (1) An alternative form or plan of government recommended by a study commission must be submitted to the voters in the same manner as provided in 7-3-149.

(2) Ballot requirements and treatment of suboptions on an alternative form or plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.

Those were the dots that I connected to conclude that only three options could be on the ballot. If ultimately the Study Commission and your County Attorney determine otherwise, that is fine with me. I just want to make sure it is thoroughly considered because the last thing you want to have happen is to have the work of the Study Commission being thrown out by a court.

My perspective on addressing each of the suboptions allowed in Part 4 is that a ballot question could be framed to include each of the suboptions selected as a single ballot question but having said that I believe what you are planning to do by separating the important decisions is the better way.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including **one item from each of the choices listed in 7-3-412 through 7-3-418.**

My real concern lies with submitting each individual office as a separate partisan/non-partisan question, rather than all offices being either partisan or non-partisan. Were it not for how that question was structured, I probably wouldn't have even thought twice about putting Questions 1-4 on the ballot if Question #4 had been worded so that partisan/non-partisan applied uniformly to all elected offices.

I missed the call from Alan yesterday because I was at a dental appointment. I returned his call but missed him so will try again today.

As stated numerous times, I am not an attorney so am not offering a legal opinion, just my concerns about what I see as potential problems with the ballot language.

Brian pointed out to me that I had missed the point in 7-3-150(2) that requires the "For adoption" and "Retain the existing" be rotated when I argued that the ballot questions need to be placed uniformly on the ballot with "For the adoption" being placed first so I do need to clarify that.

I think the questions must be ordered uniformly on each ballot but that ballots shall be printed so that half have the "For the alternative" first and "For the existing" placed second and the other other half being reversed to comply with 7-3-150(2).

7-3-150. General ballot requirements. (1) *The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:*

Vote for one:

FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

FOR the existing form of government.

(2) *The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.*

A couple more observations at no extra charge..... ;-)

From my observations, four year terms can work with five commissioners. Four year terms with three commissioners is a wreck. Currently Madison, Park and Custer Counties have three commissioners with four year terms. Custer is considering placing the question on the ballot to go back to six year terms. Having two out of three commissioners potentially being new creates all sorts of problems simply due to a lack of experience. That is exacerbated when the third commissioner only has two years of tenure.

The most vivid example of problems with three commissioners with four year terms comes out of Park County. In the mid-1990's Park county had three long-serving commissioners and from an outsiders perspective was one of the best functioning counties in MT. Then they held an election where two were up at the same time. One chose not to run again and the second tried to campaign from the courthouse only and was defeated. That left Park with one long-serving commissioner and two new commissioners. Two years later, that commissioner chose not to run again so they ended up with two commissioners with two years of experience and one new commissioner. Things began to fall apart with the commission not really functioning all that well. Then two years later, one of the two up for their first re-election was precluded from running again and the second was defeated. That left them with one commissioner having served two years and two new commissioners. I am sure you are all to familiar with the challenges a board of commissioners faces when new commissioners are elected under the best of circumstances but imagine the turmoil when there is only one commissioner with two years of experience and two new ones? The depth of knowledge about the limitations facing local government is pretty shallow, which leads to bad decisions. It has taken Park County a very long time to recover and return to a situation where a majority of their commissioners have the benefit of the knowledge acquired through tenure.

I am sure you have had lengthy discussions about partisan/non-partisan local elections so won't

delve into that but would observe that going non-partisan does seem to be one option that finds favor with voters. There now are about a dozen counties that have non-partisan local elections for all county elected officials. There are good and valid arguments on both sides of the partisan/non-partisan debate.

In the end, it is the study commission's decision and you need to rely on the advice of your legal counsel.

In Howard's memo, he discussed a transition plan and notes which I have not fully digested yet. As I mentioned Custer is looking at going back to six year terms. Commissioner Strouf has been trying to work out a plan that would hold all elected commissioners harmless to not artificially shorten a commissioner's term to which they were elected. In order to do that though they will have to present the option to the voters in 2017 and could then begin the implementation of a transition. Here is the transition plan he came up with:

Commissioner Term Length Transition Plan

Commissioner District 1

2018 Election (6 year term)

-Propose term is changed from 4 years to 6 years, to be effective upon 2018 election.

2024 Election (6 year term)

Commissioner District 2

2018 Election (4 year term)

-Propose term is changed from 4 years to 6 years, to be effective upon 2022 election.

2022 Election (6 year term)

Commissioner District 3

2016 Election (4 year term)

-Propose term is changed from 4 years to 6 years, to be effective upon 2020 election.

2020 Election (6 year term)

I have meeting back to back most of the day but will attempt to respond as quickly as possible if you have any questions of me, otherwise I believe it is in the hands of the commissioners and attorneys to determine the ballot language.

Harold

Harold Blattie, Executive Director
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From: George H. Corn [gcorn@dmlaw.com]
Sent: Monday, March 14, 2016 6:15 PM
To: 'Sharon Schroeder'; Marilee Shockley
Cc: Alan and Pat Thompson; Klarryse Murphy; Scott Boulanger; Glenda Wiles; 'Howard Recht'; Harold Blattie
Subject: RE: Maco e-mails

All,

I appreciate Harold's thoughts and suggestions on this. I haven't had time to digest and review but here's some cursory thoughts.

1/ From looking at his suggested ballot language he believes we're ok on our Question #1 . (number of commissioners)

2/ From looking at his suggested ballot language he believes we're correct on Question #2 . (term of office)

3/ he thinks we have missed it on the partisan/ nonpartisan issue based on Section 7-3-151. It would seem to in a reading of 7-3-151 (1) which refers to " a petition recommendation may not involve..." more than three separate suboptions and more that two alternatives...."

But I note that 7-3-151(2) says that " A proposed change... in a plan of government..." must be submitted as a single question "except" that the suboptions within the form of government authorized in Title 7, chapter 3, parts 1-6 may be submitted to the electors as separate questions. As Harold point out we're in Part 4. I see that part 4 contains approximately 15 suboptions. Aren't we proposing a change to the plan of government and doesn't the language of 7-3-151(2) authorize multiple question so long as they are in the proper form? Most importantly, since we are not proposing any change in the number of offices which we already have, aren't we only asking a single question for each of them I. e. should it be partisan or nonpartisan?

As you can see I've copied Harold and Howard. I've also attached Howard's memo re the partisan non partisan along with the first three statutes Harold refers to.

Got to run for now.

George

From: Sharon Schroeder [mailto:jimandsharon.schroeder@gmail.com]
Sent: Monday, March 14, 2016 4:50 PM
To: Marilee Shockley <mtmarilee@yahoo.com>
Cc: Alan and Pat Thompson <cobbler380@yahoo.com>; Klarryse Murphy <kmurphy@rc.mt.gov>; George H. Corn <gcorn@dmlaw.com>; Scott Boulanger <elkhunter1964@gmail.com>; Glenda Wiles <gwiles@rc.mt.gov>
Subject: Re: Maco e-mails

Alan, glad you have a call in to Harold. I think a dialogue will help clarify the issues.

Needless to say, I was beyond disappointed to see how far off course we apparently are.

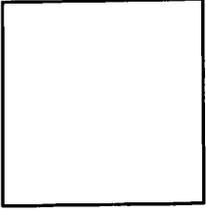
See you all Wednesday.

Sharon

On Mon, Mar 14, 2016 at 3:49 PM, Marilee Shockley <mtmarilee@yahoo.com> wrote:

Just opened the emails. I guess we ill just have to straighten this out Wednesday.
Looks like we have our work cut out for us.

Marilee



On Monday, March 14, 2016 3:34 PM, Alan and Pat Thompson <cobbler380@yahoo.com> wrote:

Greetings,

I am sure you have each read the response from MACo in regards to our final report. I have met with both Klarryse and Regina and changed the agenda for Wednesdays meeting so we can discuss amending the final report. Regina says she is OK with us amending and getting the ballot language to her on Wednesday, but we need to get it done asap. I will not review MACo's information but ask each of you to do so and come to the meeting ready to talk about revision if necessary. I have a call into Harold Blattie at MACo but he has not gotten back to me at this time. Hopefully I will have talked to him before Wednesday. We will have to change some of the ballot language to conform to Montana Code 7-3-150. I apologize for missing that section and should have noticed it. The main question again will be about partisan versus non-partisan and how it will appear on the ballot.

Alan

--

Sharon