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LEGAL MEMORANDUM

TO: Sheri Scurr on behalf of the State Administration and Veterans' Affairs Committee
FROM: K. Virginia Aldrich, Staff Attorney
RE: Priority of Laws Regarding School Elections
DATE: September 16, 2013

QUESTION PRESENTED

This memorandum was prepared for the State Administration and Veterans' Affairs Interim Committee in response to a request for information by Ms. Scurr regarding the priority of election statutes and their applicability to school elections. Specifically, the following question was asked:

How are laws related to school elections prioritized?

SHORT ANSWER

In most instances, election administrators are instructed to use procedures for general elections as described in Title 13. However, any provision found in Title 20 takes precedence over the procedures described in Title 13. In addition, conflicting wording about when to apply Title 13 requires careful legal analysis to determine how these two titles work together and which particular provisions of Title 13 are applicable.

LEGAL ANALYSIS

Because of the scattered nature and construction of laws related to school elections, school election statutes can be complicated and perplexing. Hence, careful attention to the priority of statutes is required, but in some instances, the statutes themselves are conflicting or lack clarity. In these cases, the rules of statutory interpretation must be applied. Statutes governing school elections can be found in both Title 13 and Title 20. Section 20-20-102, MCA, provides guidance concerning the preeminence of Title 20:

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall

govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.¹

School election statutes were reorganized in 1979, and many were repealed or transferred to Title 13, presumably to reduce duplication. *See* Ch. 571, L. 1979. Hence, Title 20 provides relatively few details concerning the administration of school elections. Section 20-20-102, MCA, contemplates the difficulty in balancing the conflicting statutes and gives priority to Title 20, while recognizing that most election administration statutes are now housed under Title 13. According to the plain meaning of the second sentence of this section, Title 20 statutes claim precedence over school elections. If Title 20 does not provide guidance concerning a specific issue with school elections, the statutes in Title 13 concerning general elections then fill in the gaps. This statute's treatment of Title 20's superiority to Title 13 in the matter of school elections embodies a historical axiom of statutory interpretation--that the specific governs the general. *See Schuff v. A.T. Klemens & Son*, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002. *See also* sections 1-2-102 and 1-3-225, MCA.

For instance, section 20-9-427, MCA, specifies that "[a] school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice" is in a different form. Therefore, the notice provisions of that section take precedence over any other notice requirements, and bond elections must also comply with the general election procedures found in Title 13, unless any particular procedure is superseded by a statute in Title 20.

Likewise, in section 20-3-304, MCA, the "[e]lection of trustees must comply with the election provisions of Title 13 and this title." This section repeats the sentiment of section 20-20-102, MCA,--that Title 13 and Title 20 statutes are meant to work in concert. However, unlike section 20-20-102, MCA, the wording in section 20-3-304, MCA, does not specifically restrict application of election laws in Title 13 to general election laws. The interpreter of a statute is "not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. Further, "[a]n interpretation which gives effect is preferred to one which makes void." Section 1-3-232, MCA. Lastly, any interpretation of how the statutes work together must be reasonable. Section 1-3-233, MCA. Therefore, to give effect to both statutes concerning Title 13, election procedures falling outside of "general elections" (such as primary procedures) may be applied to trustee elections, but Title 13 procedures concerning "general elections" should be applied to school elections for nontrustee matters.

In addition to practices for general elections found in Title 13, school elections are also inserted into other statutes in Title 13 by direct reference. Statutes that specifically reference school elections as well as all Title 20 statutes usually prevail over the more general practices in Title 13 that do not mention school elections.

¹No rules promulgated by the Office of Public Instruction related to school elections were found.

The analysis gets more complicated concerning section 20-20-417(2)(b), MCA, in which a county election administrator conducting a school election is directed to "conduct the election in accordance with the provisions of Title 13, chapters 13 and 15." Presumably, the specificity of this section would require county election administrators conducting school elections to exclude procedures from Title 13 outside of chapters 13 and 15 (which concern election procedure and canvassing, returns, and certificates, respectively). This is bolstered by section 1-2-102, MCA: "[w]hen a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." However, some administrative procedures for elections are housed under other chapters in Title 13. For instance, write-in candidates must file a declaration of intent pursuant to Title 13, chapter 10. In a strict approach to statutory interpretation, because this procedure is not within chapter 13 or 15, county election administrators potentially should not apply this directive when administering a school election. Yet, the application seems chaotic if county election administrators who are administering a school election potentially must disregard the same administrative procedures that a school election official (operating under section 20-20-102, MCA, rather than section 20-20-417, MCA) must follow. In any event, under current practice, election administrators are directed to apply this statute. *See* Montana Association of School Business Officials, Montana Office of Public Instruction, and Montana Secretary of State *School Election Handbook 7* (2013). Hence, some of the wording in Title 20 requires careful statutory analysis to unravel complex (although seemingly straightforward) references as to when and how to apply Title 13.

CONCLUSION

Although the interplay between Title 13 and Title 20 initially seems straightforward, especially considering the guidance of section 20-20-102, MCA, a closer look reveals a more complex situation. With multiple treatments of Title 13 in Title 20 and with multiple statute-specific references within Title 13, a straightforward reading of the school election statutes is not always possible. Rather, the application of statutory interpretation statutes from Title 1 and legal rules of statutory interpretation must be applied to fully understand how to apply specific statutes. Even so, the results may be surprisingly contradictory.

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