Local Govt. Com
Exhibit No. 6
Date 2.20.07
Bill No. SB 339

VOLUME NO. 51 OPINION NO. 18

ANNEXATION - function of municipal government;
CITIES AND TOWNS - annexation;
LOCAL GOVERNMENT - annexation;
MUNICIPAL GOVERNMENT - annexation;
STATUTORY CONSTRUCTION - avoid absurd results;
MONTANA CODE ANNOTATED - Title 7, chapter 2, parts 41, 42 to 47, 43; sections 1-2-101, 7-1-2103, 7-2-4101, (1), -4204(1), -4703(2), (3), 7-6-2501 to -2541, 13-3-101 to -105;
MONTANA CONSTITUTION - Article XI, section 4.

HELD: Cross-county annexation is permitted by Montana law and is not dependent upon county approval.

September 21, 2006

Mr. Mathew J. Johnson
Jefferson County Attorney
P.O. Box H
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on an issue that has arisen in your county concerning cross-county annexation. I have rephrased your questions as follows:

> Is a municipality located in one county required to obtain approval from a neighboring county if it seeks to annex territory within the borders of the neighboring county?

Montana Code Ann. § 7-2-4101 sets forth the procedure for organization of a new municipality. Subsection 1 provides:

> Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less

> than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

Section 7-2-4204(1) governs the procedure for approval of the petition. It provides that after the petition has been filed and a census completed, if it has been determined that the requisite number of inhabitants exist for the formation of a municipal corporation, "the county commissioners shall call an election of all the registered electors residing in the territory described in the petition."

The role established by the legislature for county government in the creation of a new municipality is a procedural rather than substantive one. The county is responsible for ensuring that the establishment of a municipality proceeds along the appropriate steps. The governing statutes do not give county government the authority to approve or deny the petition for incorporation so long as the statutory process has been observed.

Where part 41 governs organization of a municipality, parts 42 through 47 govern the annexation process for existing municipalities. The statutes provide for six independent annexation methods. Review of these statutes indicates that, as with the creation of a new municipality, the annexation provisions do not extend authority to county governments to approve or deny a proposed annexation. The permission of the county in which a municipality was originally incorporated is not required before a municipality may annex additional territory within that county. For instance, the city of Helena would not be required to request the approval of Lewis and Clark County if it proposed to annex contiguous land in Lewis and Clark County pursuant to part 43. Absent specific statutory language to the contrary, it logically follows that the neighboring county's approval is not required if the annexation crosses over county boundaries to annex territory in a neighboring county.

Cross-county annexation of land into a city does not alter existing county boundaries or impair powers statutorily granted to county government. See, e.g. Mont. Code Ann. § 7-1-2103 (county powers); Mont. Code Ann. § 7-6-2501-2541 (county taxation); and Mont. Code Ann. § 13-3-101-105 (designation of precincts and polling places).

As Montana's urban areas grow, it is likely cross-county annexation may become more common. The annexation provisions, particularly those found in part 47, express the legislature's desire to ensure sound urban development and an acknowledgement that

municipalities are created "for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles." Mont. Code Ann. § 7-2-4703(2). The legislature's ultimate objective was to create standards for annexation in order to ensure the high quality of services needed for public health, safety and welfare. Mont. Code Ann. § 7-2-4703(3).

My role in construing a statute "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. §1-2-101. Had the legislature intended to require county approval for municipal annexation, it would have reflected its intent in statute. However, there is nothing in the plain language of the relevant statutes that indicates the legislature intended to require county approval for municipal annexation.

In addition to the governing statutes, I reviewed a memo written by then Department of Business Regulation considering the question of cross-county annexation. That memo concluded that cross-county annexation was not allowed in Montana and cited a general principle that cross-county annexation should not be allowed unless the authority for such annexation is explicitly expressed or clearly implied in statute. The memo concluded that Montana was more similar to jurisdictions that had not allowed cross-county annexation, than to jurisdictions that found it to be permissive.

After reviewing the cases on which the memo relied and I have concluded that they are inapplicable given the statutory scheme governing annexation in Montana. For instance, the express language of the governing annexation statutes in many of the cases that were cited provided that incorporated cities or towns could only annex lands which were "within the same county." See County of San Mateo v. City Council of City of Palo Alto, 335 P.2d 1013 (Cal. App. 2d 1959); Norlund v. Thorpe, 110 Cal. Rptr. 246, 34 Cal. App. 3d 672 (1973); and McGeary v. Dade County, 342 So. 2d 549 (Fla. Dist. Ct. App. 3d Dist. 1977). As was discussed in detail above, Montana law does not expressly or impliedly limit annexation by county boundaries.

Under the Montana constitution, "the powers of incorporated cities and towns and counties shall be liberally construed." Mont. Const. art. XI, § 4. The legislature has provided means by which municipalities may exercise the power of annexation, and I may not restrict the exercise of those powers by adding requirements the legislature has not provided. See Mont. Code Ann. § 1-2-101.

THEREFORE, IT IS MY OPINION:

> Cross-county annexation is permitted by Montana law and is not dependent upon county approval.

Very truly yours,

MIKE McGRATH
Attorney General

mm/anb/jym