



Legislative Council

63rd Montana Legislature

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August 28, 2014

TO: Senator Jeff Essmann, Chair of Legislative Council

FR: Todd M. Everts, Chief Legal Counsel

RE: Scope and Effect of Article V, Section 6 of the Montana Constitution Regarding Regular Legislative Sessions

During the Legislative Council's June meeting, you requested a legal analysis regarding the scope and effect of Article V, section 6, of the Montana Constitution regarding annual regular legislative sessions. This legal memorandum is my response to that request and does not represent any opinion or action on the part of the Legislative Council.

QUESTION PRESENTED

Does Article V, section 6, of the Montana Constitution limit the Legislature's authority to convene more often than once in each odd-numbered year for the ordinary purposes of a regular session other than convening the Legislature for a special session?

SHORT ANSWER

Likely yes. Based on the plain language of the Montana Constitution and Montana's ballot initiative history confirming that Montanans have voted to eliminate the Legislature's authority to convene in regular annual sessions and have repeatedly voted against legislative constitutional amendment efforts to reinstate the Legislature's constitutional authority to convene regular annual sessions¹, a court would likely find that Article V, section 6, limits the Legislature's authority to convene more often than once in each odd-numbered year for the ordinary purposes of a regular session other than the convening of the Legislature for a special session.

LEGAL ANALYSIS

The general rule in Montana is that the constitution is a limit on rather than a grant of legislative authority. See State ex rel. Evans v. Stewart, 53 Mont. 18, 161 P. 309 (1916), and State ex rel. DuFresne v. Leslie, 100 Mont. 449, 50 P.2d 959 (1935). Under this general rule, the Legislature is free to act in any lawful manner in any area that is not constitutionally restricted.

¹See Susan Fox's excellent historical overview entitled "Annual Sessions - Montana History", prepared for Legislative Council, January 8, 2014 (revised 2/12/14).

The original language of Article V, section 6, of the 1972 Montana Constitution provided the Legislature with the authority to convene 60 day annual regular sessions and convene in special sessions at the call of the Governor or the Legislature:

Section 6. Sessions. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor at the written request of a majority of the members.

After only one annual session in 1973, Montanans, at the general election held November 5, 1974, approved Constitutional Initiative No. 1, with the following amendments to Article V, section 6, for the purpose of eliminating the constitutional language that authorized the Legislature to convene in regular 60-day annual sessions and providing for biennial regular legislative sessions of not more than 90 days in each odd-numbered year:

~~**Section 6. Sessions.** The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry with the same status to any other session of the legislature during the biennium.~~ The legislature shall meet at least once a year each odd-numbered year in regular session of not than ~~60~~ 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor at the written request of a majority of the members. (Constitutional Initiative No. 1, November, 1974)

The current language of Article V, section 6, of the Montana Constitution now provides:

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

The Montana Supreme Court has recently stated: "[t]his Court applies the same rules in the construction of the Constitution that it applies in the construction of statutes. *Martien v. Porter*, 68 Mont. 450, 464, 219 P. 817, 819 (1923); *Keller v. Smith*, 170 Mont. 399, 404, 553 P.2d 1002, 1006 (1976). "[T]he intent of the framers of the Constitution is controlling and that intent must first be determined from the plain language of the words used." *State ex rel. Racicot v. District Court*, 243 Mont. 379, 384, 794 P.2d 1180, 1183 (1990)." *Cross v. Van Dyke*, 375 Mont. 535, _ P.3d _ (2014).

The plain language of Article V, section 6, requires that the Legislature meet in regular session

each odd-numbered year for not more than 90 legislative days. The constitution allows the legislature to extend the length of any subsequent session. The constitution further authorizes the convening of the Legislature in special session either by the governor or the majority of the membership of the Legislature.

However, post 1974 Constitutional Amendment No. 1, Article V, section 6, is silent regarding whether the Legislature can meet in a regular session outside of an odd-numbered year. Absent clear constitutional direction, a court would first look to the intent of the framers of the constitution, and in this case, a court would look at the intent of the framers of the 1974 voter approved Constitutional Amendment No. 1, that eliminated the 1972 constitutional language that authorized the Legislature to convene in regular 60-day annual sessions. The intent of the proponents of that Constitutional Amendment was to eliminate the original authority under the 1972 Montana Constitution for Legislature to convene regular annual sessions.²

A court would also likely look at the failed ballot box attempts by the Legislature in 1981 and 1988, that put two Constitutional Amendments before the voters to reinstate annual regular sessions and split regular sessions, as confirmation that the purpose of the of the 1974 Constitutional Amendment No. 1 language was to preclude the Legislature from convening annual regular sessions, given that subsequent Legislatures were attempting to constitutionally reinstate annual regular sessions.

The Montana Supreme Court has also examined a somewhat analogous section under the 1889 Montana Constitution that was silent regarding whether the Legislature could meet in regular sessions outside of the alternate years and concluded that for ordinary purposes of a regular session, the Legislature may not convene more often than once in 2 years. State ex rel. Bennett v. St. Bd. of Examiners, 40 M 59, 104 P 1055 (1909).

In conclusion, the plain language of the Montana Constitution, the intent of the framers of the Constitution, and Montana's ballot initiative history confirming that Montanans have voted to eliminate the Legislature's authority to convene in regular annual sessions and have repeatedly voted against legislative constitutional amendment efforts to reinstate the Legislature's constitutional authority to convene regular annual sessions, would likely lead a court to conclude that Article V, section 6, limits the Legislature's authority to convene more often than once in each odd-numbered year for the ordinary purposes of a regular session other than the convening of the Legislature for a special session.

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²See Lopach, James, et. al. We the People of Montana...The Workings of a Popular Government (1983), documenting the proponents' arguments in favor of eliminating annual sessions.