



**Montana Legislative Services Division**  
**Legal Services Office**

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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:** Combining school and primary elections

**DATE:** August 22, 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 ability of the Legislature to combine school and primary elections. Specifically, the following question was asked:

Does the consolidation of school elections and primary elections pose constitutional challenges with respect to local government control of schools?

**Short Answer**

The consolidation of school district officer elections with primary elections likely does not pose constitutional issues with respect to local government control of schools. Other than elections for school district officers, specific proposals may raise constitutional issues and would require additional legal analysis.

**Discussion**

School elections may be used for the election of school district officers, unification of schools, opening new schools, school-related levies or bonds, establishing building reserve funds, school bus transportation purposes, and community college district organization or annexation. The Legislature has specified that most school district votes are held on an annual school district election day. Section 20-20-105, MCA. However, the Legislature has specified that special school district elections may also be called by school district officials. Sections 20-6-312, 20-6-423, 20-6-505, 20-6-603, 20-6-621, 20-9-421, 20-9-502, 20-9-533, and 20-15-208, MCA. Because the text of the Constitution specifically discusses school district officer elections and local control, these topics are discussed separately.

## I. School District Officer Elections

While research did not reveal specific cases in Montana decided on the county administration of school district elections for school district officers, the historical record and related case law suggests that the 1972 Constitution was written to allow combined elections for school district officers. The 1889 Constitution separated elections for school districts officers from elections for state or local government officials. Article XI, section 10, of the 1889 Montana State Constitution stated:

The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

The Education and Public Lands Committee of the 1972 Constitutional Convention proposed replacing this text with a section that specially deleted the prohibition of holding concurrent elections. The proposal for new Article X, section 8, stated, "[t]he Legislative Assembly shall provide for elections of School District Trustees." *Montana Constitution Convention, Verbatim Transcripts*, Vol. VI, 2046.

Before the end of the Constitutional Convention, the section's scope would be broadened beyond elections, allowing reference to local control of school districts. *Id.* at 2046-2047. An attempt to reinsert language prohibiting school elections from being held in conjunction with state and county elections was resisted by the Convention. *Id.* at 2047. Delegate Harrington explained that the Education and Public Lands Committee recommended striking the 1889 language because "money could possibly be saved if these elections could be combined". *Id.* at 2047. Delegate Hanson opposed the motion to reinsert the restrictive language separating the elections because "it could be done by the Legislature". The section's language was adjusted by the Committee on Style, Drafting, Transition, and Submission to its current form. *Id.* at Vol. II, pg. 998. At that time, the Committee's chairman noted that there were "no substantive changes: changes in style only". *Id.* at Vol. VII, 2576. Article X, section 8, of the Montana State Constitution currently states:

The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

By the plain language of the current constitutional text, the Legislature may provide for elections of school district officers. This broad authority would include the power to combine school district officer elections with county or state elections.

## II. Local Control

Although the Montana Constitution clearly addresses school board officer elections, the matter of other types of school district elections, such as on the questions of bonds, levies, other funds, consolidation of school districts, etc., is a more difficult question. Because at this time the Committee has not narrowed the scope of the study, combining primary elections with school district elections may include regular school elections, special elections, or both. In addition, primary elections occur every other year, so a proposal could recommend school elections as infrequently as every other year. Because numerous options exist, a detailed legal analysis is not possible at this time. However, a general analysis of the local control provisions of Article X, section 8, is provided.

In Article X, section 8, school trustees are entrusted with "supervision and control of schools in each district". When the drafters considered Article X, section 8, Delegate Heliker, who offered the amendment inserting the reference to local control by school boards, stated:

. . . there is grounds for concern of . . . the autonomy of . . . the local school boards, as financing of the schools gravitates toward the state more and more . . . . And the fear has been expressed here . . . in this committee, when we were discussing these matters previously, that the local school boards would lose autonomy as they lost their control over the funds, if they do. Now, this committee has not provided, I notice for autonomy in the Constitution for local school boards, although that autonomy is [currently] provided in the statutes which make the local school boards bodies corporate. At the same time, however, the [1972 Constitutional Convention draft of Article X, section 11] provides for autonomy to a certain extent for the Board of Regents, which they propose to establish as a constitutional board. And I feel, therefore, that we should give constitutional recognition and status to the local boards to -- first of all, to allay the fears which have been expressed, which I think are well founded, concerning the preservation of local autonomy; and secondly, to give parallel treatment to the governing boards of the public schools, as well as the public universities and colleges.

*Montana Constitution Convention, Verbatim Transcripts*, Vol. VI, 2046. The Montana Supreme Court has found that in construing Article X, section 8, "the delegates were chiefly concerned with the preservation of existing local board control and power -- not with expansion of local control and power. The delegates wished to insure that the state legislature would not strip the local boards of their powers." *School District No. 12 v. Hughes*, 170 Mont. 267, 273 (1976). The Court noted that because of this, "an examination of the authority local boards possessed at the time of the convention becomes important". *Id.* at 273.

At the time of the Constitutional Convention, the Legislature specified the first Saturday of April as the regular school election day, and it granted to school district trustees the right to call other, special school district elections unless otherwise provided by law. Section 75-6404, R.C.M. 1947. Because the Legislature specified when school elections took place and reserved

the right to limit special elections, "[t]he statutes in question were in existence at the time the constitutional article was adopted by the convention and were available for consideration of the convention." *School District No. 12* at 274. Under the delegates' concern for preservation of existing board powers, the Legislature may be allowed to modify school district elections because the Legislature had reserved that right to itself prior to the Constitutional Convention.

In addition, the Court has noted that "local boards of trustees have always been held subject to legislative control." *Id.* at 273 (citing *Woolsey v. Carney*, 141 Mont. 476 (1963); *Abshire v. School District*, 124 Mont. 244 (1950); *Wyatt v. School District No. 104*, 148 Mont. 83 (1966); *Teamsters v. Cascade County School District No. 1*, 162 Mont. 277 (1973)). "The Montana Supreme Court decided very early that a school district was a public corporation with limited powers, exercising through its board only such authority as is conferred by law, either expressly or by necessary implication." *School District No. 12* at 273 (citing *Finley v. School District No. 1*, 51 Mont. 411, 415 (1915), *State ex rel. School District No. 4 v. McGraw*, 74 Mont. 152 (1925). If the Legislature has failed to prescribe a policy, however, "local boards have inferred general powers to act". *Id.* at 274 (citing *Campana v. Calderhead*, 17 Mont. 548 (1896)).

However, Article X, section 8 does hold some protections for local school boards. As indicated above, the Legislature is restricted from eroding authority maintained by the school boards before the 1972 Constitutional Convention. In addition, the Montana Supreme Court has held that certain acts or omissions have violated the local control provision, including lack of funding. The Court held that the spending disparities among school districts "may be said to deny to poorer school districts a significant level of local control, because they have fewer options due to fewer resources". *Helena Elementary School District No. 1 v. State*, 236 Mont. 44 (1989). Restrictions upon school boards to call special elections on funding issues, such as bonds, could implicate questions over funding control. However, because the local control provision has not been extensively developed in the courts and because there are several ways of structuring any proposal to combine school elections and primaries, the question of constitutionality relies upon a legal analysis of a specific proposal.