

September 23, 2021

TO: Local Government Interim Committee

FROM: Pam Ellis, Board member, County Water District of Billings Heights

RE: Considerations for Review

7-13-2212 Qualifications to Vote

A resident of the district may vote if they are a registered voter regardless of whether they own or rent. A business owner cannot vote unless they own real property in the district. In our district, business owners who rent purchase water from the district as well as schools, parks and churches. They cannot vote. Residential rate payers receive a ballot automatically. Business owners have to apply for a ballot. The county is not responsible to communicate the process to business owners. Many business owners are essentially unaware of their voting rights; others are denied because they rent the real property that houses their business.

I am aware that at least one resident received a ballot that is not a water district customer. That individual lives within the boundaries of the district but cannot afford the fees to get water from the district and relies on well water. We also discovered in going door to door, that about 100 homes in the district did not receive a ballot. Apparently the county relied on a GIS map to draw the boundaries and a neighborhood was omitted. This would not happen if the district provided a list of their customers to the election department and the county cross-referenced the list with registered voters. I believe everyone who pays a bill should receive a ballot. For business addresses, the county should be required to send guidelines to the business address that pays for bill instructing them how to register an individual representing that business to vote. Candidates were unable to obtain a usable list from the county or the MT Department of Revenue with the names and addresses of real property owners. I spent hours looking up the businesses one by one on the property tax records to send voting information and applications.

7-13-2261 Recall of officers

Consider the role of the county and city appointees. It may be appropriate that appointees could be removed by the appointing body. As a county appointee, I feel that my responsibility is to the rate-payers. The county commissioners who appointed me are accountable to their voters and perhaps should have the option to replace their selected appointee.

7-13-2231 Election or Appointment of board of directors

Our district had not held an election in memory. There had not been an election in the 21 years we have lived in the district. Another board member has lived in her house for more than 40 years and does not recall an election. There was no information on the district website about the terms of board members. When I inquired as a county appointee about elections, I was told that anyone who was interested should speak to the manager or board president. I'm aware of more than one person who did that and was told there were no open positions, though in 2021, three board members terms expired. The county election officer did have a record of board members and their terms though he was dependent upon the district to provide the information. Consider

requiring water and sewer districts to publicly list board members, contact information and terms.

7-13-2232 Compositon of board of directors

Our district is in the municipality of Billings and the district boundaries extend into the county. The board has had a city a county appointee since it's establishment in 1958. Because the district had not complied with any open meeting laws, appointees were recruited by the current board and staff and referred to the city and county. I was the first appointee who saw an in a local paper and applied directly to the county. The board was unwelcoming and the manager refused to provide me with the information other board members received. The board chair retained an attorney by verbal agreement to fight against seating a city appointee and to remove me as county appointee, claiming that the board had sole authority to appoint the city and county appointees mid-term. In May, the prior board refused to seat the three newly elected board members at the May meeting and planned to appoint new members to replace the legally appointed city and county appointees. This was not the interpretation of the county attorney, the assistant county attorney and the city attorney who filed a Temporary Restraining Order against the district. The legal fees paid by the district were more than \$20,000. Our attorney could not find anything in statute restraining the board president from entering into a verbal contract without a vote of the full board. The decision by the prior board president was damaging to board and staff relationships and I believe an abuse of ratepayers and a violation of statute (see duties of administrative personnel).

7-13-2233 Qualifications of Directors

I have the same concerns as I did for Qualifications to vote. We had a candidate file for Director who was disqualified because the he was a 51% owner of an LLC that owned real property in the district. He was allowed to vote but the election officer disqualified him as a candidate the day before the ballots were printed, after he had spent personal dollars and many hours campaigning. Consider that a director should be someone who pays a water bill to the district.

7-13-2262 Vacancies on board of directors – appointees

This is the section that created the legal challenge in Yellowstone County. Susan Swimley advised the district that they had the sole authority to appoint a city or county appointee who resigned mid-term. The board chair claimed no appointees had ever resigned (since 1958) and this issue had never arisen. The city and county attorneys both interpreted that statute to mean that the city and county would appoint in their appointee resigned. The language is unclear and needs to be clarified.

7-13-2271 Organization of the board of directors

- (1) A new board of direcors shall hold its first meeting on the sixth Monday after the election of directors.

Generally attorneys agreed that this language only applied to a new board. Why would the state specify the sixth Monday after the election? It was unclear to the 3 newly elected board

members and two appointees of the County Water District of Billings Heights if this language applied. I don't think any district benefits by being told the day of the week to hold a meeting; please revise this section.

7-13-2272 Duties of the board president

- (1) The president shall sign all contracts on behalf of the district... Please clarify that that president cannot sign contracts without a vote of the board and that contracts must be written and not verbal
- (2) The president may propose a monthly salary in excess of the amounts provided in 7-13-2273 (2) The maximum amount specified is \$100 per meeting (7-13-2273) unless the increase is approved by the qualified electors in the district. I have asked for proof that board salaries were legally increased and have never received a response that provides the evidence. I computed the amount of time the past board spent in board meetings over the 5 years and then computed the hourly rate when compensated \$150 per meeting
 - a. The board spent 3 hours and 43 minutes in board meetings, January 2015-December 2020
 - b. The board received \$150 for each meeting, 5 years x 12 months = 60 payments
TOTAL PAID \$9,000.00
 - c. HOURLY RATES OF PAY FOR BOARD Worked 3 hours and 43 minutes;
received \$9000 \$2,623.91

The board did not receive an agenda or any documents before a meeting. The public received nothing. Many board meetings were concluded in less than 10 minutes, some in less than 5.

7-13-2278 Duties of administrative personnel

- (1)draw warrants to pay demands against the district that have first been approved by at least three members of the board Our district has 7 members. Allowing dispersal of funds without the support of a quorum of the board is not desirable. I wonder if this section failed to consider that the state has both 5 and 7 member boards.

7-13-2251 and 7-13-2252 Dissolution of District

The two options for Dissolution of a District seem prohibitive. The board should be allowed to put the issue on the ballot with assets and debt if there is a substitute available to provide water to the ratepayers. If the ratepayers want to dissolve the district, requiring more than 50% to sign a petition effectively prohibits this option in our district with 5456 residential connections and 10,119 residential voters as well as 458 commercial connections.

Montana Open Meeting/Open Records laws

The County Water District of Billings Heights has in the past consistently refused to adhere to Open Meeting/Open Record laws. The director of the Montana Rural Water Systems testified during the legislative session that they had a book available to all water and sewer districts. When I inquired, they ordered books from Kansas and sold them at cost to districts. The book was not available in digital format. There is a book that is relevant to Montana: *Montana Local*

Government Board Handbook: A Guide to Serving on Boards, Districts, Commissions and Committees 2016 edition that is very helpful and should be available to boards. Representative Gist had a bill in the last session that put some teeth into the law but was not passed by the Senate. There are many other resources available to boards as well as statute but generally new board members will not know how to access this information. The current law relies on staff and boards to comply with the law. Hiring an attorney to pursue violations of open records law is prohibitively expensive for an individual.