

COMMUNITY COLLEGES - Legislative approval for organization of community college district;

COMMUNITY COLLEGES - Absence of requirement that board of regents approve organization of community college district before submission for legislative approval;

REGENTS, BOARD OF - Absence of requirement that board of regents approve organization of community college district before submission for legislative approval;

STATUTORY CONSTRUCTION – Reference to bill title as evidence of legislative intent;

STATUTORY CONSTRUCTION - Plain meaning controls in absence of ambiguity;

UNIVERSITY SYSTEM - legislative approval for organization of community college district;

UNIVERSITY SYSTEM - Absence of requirement that board of regents approve organization of community college district before submission for legislative approval;

MONTANA CODE ANNOTATED - Title 20, chapter 15, part 2; sections 20-15-202; -203, -204, -209;

MONTANA LAWS OF 1971 - Chapter 5, section 459; chapter 164, section 1; chapter 407, section 2;

REVISED CODES OF MONTANA, 1947 - Section 75-8112.

- HELD:
1. The Legislature has the final authority under Montana law to approve creation of a new community college district.
 2. The approval of the Legislature for the creation of a new community college district required by Mont. Code Ann. § 20-15-209 occurs after the approval by the local voters but before the Board of Regents issues its organizational order.
 3. Montana law does not require approval of the Board of Regents for creation of the district, but does require the Board to make a recommendation.

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Ms. Sheila Stearns
Commissioner of Higher Education
P.O. Box 203201
Helena, MT 59620-3201

Dear Commissioner Stearns:

[P1] You have requested my opinion on the following questions:

1. Does Mont. Code Ann. § 20-15-209 require legislative approval of a proposed new community college district before or after the organizational election conducted under Mont. Code Ann. § 20-15-203?
2. Under Mont. Code Ann. § 20-15-209 does the Legislature consider a proposed new community college district only if the Board of Regents affirmatively recommends approval?

[P2] The questions arise from a proposal for the creation of a new community college in Ravalli County. The procedures for creation of a new community college are found in Mont. Code Ann. tit. 20, ch. 15, pt. 2, which was passed by the legislature in 1971. The statutes have not yet been used successfully to create a new community college, and the procedures have never been considered in a pertinent way by a court or by a prior opinion of this office. In addition, no helpful legislative history materials from the 1971 legislative session are readily available.

[P3] For these reasons, I am able to formulate responses to your questions only by reliance on general principles of statutory construction.

I.

[P4] Under the statutes, creation of a new community college district begins with the submission to the Board of Regents of a petition seeking creation of the district. Mont. Code Ann. § 20-15-202. The Board then orders an election serving two purposes--to seek the approval of the voters in the district and to elect the district's trustees if the voters approve the proposal. Mont. Code Ann. §§ 20-15-203, -204.

[P5] Mont. Code Ann. § 20-15-209 describes what happens after the election:

1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

Your questions arise from the lack of clarity of the second sentence of subsection (1) calling for approval by the legislature “upon the recommendation of the regents.”

[P6] This statute is actually an amalgam of three different bills passed by the 1971 legislature. 1971 Mont. Laws ch. 5, § 459; ch. 164, § 1; ch. 407, § 2. The second and third bills amended the first after it was codified as Rev. Codes Mont. 1947 § 75-8112, and the compiler’s comments to the original codification of the statute indicate that the amending bills did not refer to each other and were in some respects inconsistent with one another. Meaning therefore cannot be sensibly drawn from the organization of the material within the statute.

[P7] Guidance on your first question can be found in the title of the third amendment, which is the one that added the provisions of what is now the second sentence of

subsection (1). Peretti v. State, 238 Mont. 239, 777 P.2d 329 (1989) (“[T]he title of an act is presumed to indicate the legislature’s intent with regard to the provisions contained therein.”) The title of 1971 Mont. Laws reads in pertinent part:

An Act to . . . Amend Section 75-8112, R.C.M. 1947, . . . requiring *Final* Approval By the Legislature Upon Recommendation of the Board of Regents for the Establishment of a New Community College District.

(Emphasis added.) Given the detailed procedural requirements set forth elsewhere in the statute, the inclusion of the word “Final” can fairly be read as an indication that the Legislature intended its approval to be the last substantive step authorizing the district to begin operation.

[P8] It would have been a simple matter for the Legislature clearly to state the contrary if that were its intent. Moreover, it would be odd for the Legislature to pass on a proposal for the creation of a district without knowing whether the proposal had enough support in the local community to generate a favorable vote. I therefore conclude that the legislative approval requirement in Mont. Code Ann. § 20-15-209 occurs after the coordinator of community colleges certifies that the proposal has received the required votes for voter approval.

[P9] The provision of the statute for the Board of Regents to issue an organizational order is therefore properly viewed to be triggered by legislative approval. The timeline you have provided appears consistent with the statutory procedures in this respect.

II.

[P10] Your second question is whether the phrase “acting upon recommendation of the regents” means that the Legislature may approve creation of the district only if the Board of Regents positively recommended approval. In my opinion the answer is no. “Recommendation” is different from “approval” in that a recommendation may be either positive or negative, or in some cases neither completely positive nor completely negative. The statute nowhere else provides a requirement that the Board of Regents approve creation of the district. Rather it appears to create a role for the Board of Regents and the Commissioner’s staff that is ministerial in nature. If the Legislature had intended to require Regent *approval* before submission of the proposal to the legislature, it could easily have said so directly.

[P11] In my view the term “recommendation” is not ambiguous with respect to whether it contemplates only positive advice. Its plain meaning includes any sort of

recommendation, whether positive, negative, or otherwise. When a statute's plain meaning may be discerned from its language, no further interpretation is required. State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs., 274 Mont. 157, 162, 906 P.2d 204, 208 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation.") I therefore conclude that the Board of Regents must make a recommendation as to the advisability of creating the district, with the final decision resting with the Legislature.

[P12] THEREFORE IT IS MY OPINION:

1. The Legislature has the final authority under Montana law to approve creation of a new community college district.
2. The approval of the Legislature for the creation of a new community college district required by Mont. Code Ann. § 20-15-209 occurs after the approval by the local voters but before the Board of Regents issues its organizational order.
3. Montana law does not require approval of the Board of Regents for creation of the district, but does require the Board to make a recommendation.

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/jym