

2008-012

TO: Mayor John Engen, City Council, Bruce Bender, Roger Millar, Mike Barton, Denise Alexander, Mary McCrea, Tim Worley, Janet Rhoades, Carla Krause, Steve King, Kevin Slovarp, Jolene Ellerton, Marty Rehbein, Nikki Rogers, Kelly Elam

FROM: Jim Nugent, City Attorney

DATE October 27, 2008

RE: Each statutory method of municipal annexation is a separate and independent method of municipal annexation and the City may determine which statutory method of annexation to utilize.

FACTS:

Recently during City Council Plat Annexation and Zoning committee on Wednesday October 15, 2008 a citizen commenting on the proposed Stony Brook annexation, zoning and subdivision appeared to be attempting to suggest that the proposed Stony Brook annexation was not being made in accordance with Montana section 7-2-4734 MCA. However, the Montana statutory method of annexation being utilized to consider the Stony Brook annexation is not the method that contains section 7-2-4734. The statutory method of annexation being utilized for the Stony Brook annexation, is the petition method of annexation set forth in title 7, chapter 2, part 46 entitled "Annexation by Petition."

ISSUES:

- (1) Are each of Montana's municipal statutory methods of annexation separate and distinct methods of annexation?
- (2) Does the city governing body have the ability to determine which statutory method of annexation to utilize with respect to a specific annexation?

CONCLUSIONS:

- (1) Montana municipal annexation statutes provide and the Montana Supreme Court has held that each of Montana's statutory methods of municipal annexation are separate and distinct.

(2) Montana's municipal annexation statutes provide and the Montana Supreme Court has held that the municipal governing body may determine which separate and distinct method of municipal annexation to utilize to annex specific land.

LEGAL DISCUSSION:

In its 1982 decision in *State ex. Rel. Hilands Golf Club v. City of Billings* (1982), 198 Mont. 475, 478 P. 2d 345, 346, in dicta in its decision, the Montana Supreme Court concluded that 1979 Montana State Legislative amendments to Montana's municipal annexation laws had created eight methods of annexation which were separate and distinct.

Later in 1989 in *Missoula Rural Fire District v. City of Missoula*, (1989) 237 Mont. 444; 775 P. 2d 209; 1989 Mont. LEXIS 145 the Montana Supreme Court affirmed a 1988 District Court ruling to the effect that the 1979 Montana State Legislative amendments to Montana's municipal annexation laws nullified an injunction against the City of Missoula annexing certain lands and impliedly overruled a prior 1975 Montana Supreme Court decision involving the same party litigants, explaining that now the several methods of municipal annexation were separate and distinct from each other.

The District Court relied on the 1979 Montana State Legislative amendments to indicate that each method of annexation was separate and distinct from the other methods, *supra* at 446. The Montana Supreme Court in affirming the District Court noted, *supra* at 447-448 that the 1979 Montana State Legislature made two significant changes to Montana's municipal annexation laws by (1) "separated each of the types of annexation provided for . . . into separate statutes; and (2) deleted some then existing statutory language pertaining to detraction of lands from a rural fire district and statutorily provided that the methods of annexation were independent from the other methods of annexation and the municipal governing body could in its discretion select one of the municipal annexation procedures to utilize.

The Montana Supreme Court specifically stated:

"In summary, the 1979 Legislature deleted the sentence of . . . which provided that the Planned Community Development Act controlled. Moreover, the language providing that the detraction statute was supplemental to 'the other method of annexation, was also deleted. Finally, the city was left with discretion over the method of annexation to be used. Each statutory method of annexation is now separate and distinct from all other methods." (Emphasis added.)

The Montana Supreme Court went on to note that:

"The legislature further exhibited its intent to make separate and distinct annexation methods by stating that: 'when the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated. [. . .] Therefore, not only did the legislature delete the language that Part 47 detraction method superseded all others, but it also explicitly stated that each annexation method was independent from all other annexation methods.'" (Emphasis added.)

Several statutory examples of the separate and distinct nature of each statutory method of annexation may readily be found reading sections 7-2-4204, 7-2-4304, 7-2-4408, 7-2-4505, 7-2-4609 and 7-2-4718 MCA.

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal

corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

Finally the Montana supreme Court in *Missoula Rural Fire District v. City of Missoula*, *supra* at 449 stated in the final paragraph of its decision before affirming the District Court that:

The 1979 statutory amendment creates methods of annexation which are separate and independent of each other. We hold that the 1979 statutory amendment renders the 1974 injunction no longer valid or applicable and MRFD v. City of Missoula was statutorily overruled. The District court properly held that the 1979 legislative changes allow the City to annex real property by certain statutory provisions without detraction prior to annexation.”

CONCLUSIONS:

(1) Montana municipal annexation statutes provide and the Montana Supreme Court has held that each of Montana's statutory methods of municipal annexation are separate and distinct.

(2) Montana's municipal annexation statutes provide and the Montana Supreme Court has held that the municipal governing body may determine which separate and distinct method of municipal annexation to utilize to annex specific land.

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