

# Ravalli County Attorney

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TO: Board of County Commissioners  
FROM: Bill Fulbright *BF*  
Howard F. Recht *HRR*  
DATE: January 18, 2012  
RE: *Reduction of Commissioner seats*

The Board of County Commissioners (BCC) has asked for a review of the legal process involved in any proposal to reduce the size of the BCC from five to three commissioners. The questions presented include:

- How can this issue be put to the Ravalli County voters?
- Is the issue presented to the voters as one question, or broken into elements, such as number of commissioners, length of terms, etc. on which different votes are taken?
- If a change is approved, is the transition plan included in the questions on which the electorate votes?
- What elements must be in the transition plan?
- If approved, when does the new commission structure take effect?
- If approved, how and when are the new districts established?

## History

A local government review study commission was convened in June 2004 by vote of the electorate. That commission placed five proposals on the November 2006 ballot, of which the Ravalli County voters adopted two – expanding the BCC from three to five commissioners, and reducing the commissioners' term of office from six to four years in length. The change in form of government was challenged in District Court, and ratified by court order dated September 18, 2007.

A proposal to again change the form of government may not be voted on until three (3) years after the current form of government became effective. §7-3-104, MCA. Because the current (5 commissioner) structure became effective in 2007, sufficient time has passed so the question can again be considered by Ravalli County voters.

## Methods of Proposing Changes

There are three ways that a proposed amendment to our current form of government may be submitted to the voters:



- (1) the BCC may enact an ordinance detailing the proposed amendment(s) to be submitted to the electorate;
- (2) a petition of 15% of the electors calling for an amendment to be put on the next ballot; or
- (3) a recommendation made by a properly established local government review study commission, which may be formed by
  - a. a BCC resolution calling for election on the question of whether a study commission is to be formed;
  - b. a petition by 15% of the electors calling for the same; or
  - c. an election held every 10 years in accord with Article XI, Section 9 of the Montana Constitution.

From the questions posed, it appears that the BCC is examining the possibility of enacting an ordinance (option (1) above) detailing the proposed amendment(s). If that ordinance is passed by the BCC, then the amendment(s) detailed in the ordinance are placed the ballot for the next (primary or general) election. §7-3-103(2), MCA.

#### **Effective Date**

Generally, a change in the form of government becomes effective on the first day of the following fiscal year (July 1<sup>st</sup> in the case of Ravalli County). 7-3-103(1), MCA. However, the effective date of the proposed changes can be modified to fit the needs of the specific transition plan if the alternative effective date is included in the issue submitted to the voters. *Id.* In other words, you are not limited to creating a proposal that is effective on the next July 1<sup>st</sup>. Rather, as long as the effective date is specified in the ordinance, you may draft it with whatever timing works best for your proposal.

#### **Elements of the Ordinance**

Any amendment to the form of government will be amending the current Ratified Plan of Government recorded on January 31, 2011 (doc #639937). If desired, the BCC's ordinance could propose changes to any of the items in that plan of government. The ordinance should detail the proposed amendments, and then conclude with a statement plainly stating that all other provisions of the Ratified Plan of Government recorded on January 31, 2011 at Document #639937 will remain unchanged, or a similar statement that clearly notifies all voters of the limits of the changes sought by the ordinance. (A copy of the current Ratified Plan is attached for your reference.)

Elements of the BCC structure that you may or may not want to consider detailing in the ordinance could include:

- 1) number of commissioners
- 2) length of term of each commission seat
- 3) overlapping (staggered) vs. concurrent terms of office
- 4) partisan vs. non-partisan office
- 5) election at large vs. district election
- 6) whether any holdover commissioners will retain office or face re-election

The specific changes proposed in the ordinance can be put to the voters as a single package, or can be separated out for proposed changes to different elements to be voted on separately. Either option legal, but having separate votes on different possible changes has the potential for conflicting results. Such conflicts could lead to more difficult implementation and/or more litigation surrounding the implementation. In addition, with separate votes on various elements, developing an understandable plan will be more difficult, because you will have to anticipate all possible combinations of voting. On the other hand, a well drafted ordinance proposing a single vote on the desired changes, with a detailed transition plan, could avoid these difficulties.

### Transition Plan

If proposed changes are approved by the voters, there must be a plan of transition from the current form of government to the new. This transition plan is perhaps best described as two parts or stages. First, there must be an overall plan for the mechanics of how the new structure will be implemented. As a practical matter, this overall plan should be clearly stated in the ordinance proposing the amendments, to give voters a clear understanding of the impact of voting for or against the proposed changes.

Second, Montana law recognizes that in any given transition, there may be details that are not anticipated early in the process. Accordingly, during the actual transition time, the BCC has the authority to "enact and enforce ordinances to bring about an orderly transition to the new form of government . . ." §7-3-157(2), MCA. In fact, "whenever a question arises concerning transition that is not provided for, the [BCC] may provide for the transition by ordinance, rule, or resolution not inconsistent with law." *Id.*

Ultimately, the BCC is charged with the responsibility of preparing "an advisory plan for orderly transition" to the new form of government. §7-3-157(1), MCA. As you can see, this is not necessarily a single list created at the outset, but can be an initial overall plan, with authority to later address the details necessary to bring about an orderly transition.

If the BCC creates a transition plan, there are some limitations that must be considered:

1. If, by the change in government, an office is abolished in which there is an elected official with time left on the official's term, that elected official must remain either in office until the end of the term for which the official was elected or be retained as a county employee until the end of their term. In either event, the person's salary cannot be reduced during their remaining term. §7-3-158(4), MCA.
2. Because there must be one and only one district for each commissioner (§7-4-2101(1), MCA), a reduction in the number of commissioners will require redistricting. For timing purposes, redistricting "must be made within 6 months preceding a primary election.
3. A commissioner's district may not be changed to affect the term of office of any elected county commissioner. §7-4-2102, MCA.

4. As a matter of fundamental fairness, candidates for the County Commissioner seats will need fair notice of the impact that changes, if adopted by the voters, will have on the commissioner positions for which they might seek election.

### **Redistricting**

Redistricting is performed by the BCC. §7-4-2102(1), MCA. While the BCC can hire advisors and appoint committees to assist, the final decision is to be made by the BCC. However, redistricting will not take place at this time. Rather, redistricting is a possible future event that must take place only if the BCC adopts an ordinance proposing a change in the number of commissioners, and the electorate approves that change at the next election. Thereafter, redistricting will take place within the last six (6) months before the next *primary* election. §7-4-2102(1), MCA.

The dividing of districts must comply with several legal requirements. Districts must be compact, and as equal in population and area as possible. §7-4-2102(1), MCA. When redistricting, the Commissioners are able to employ some limited discretion in determining boundaries, and mathematical exactness is required only when reasonably possible. *Barthelmess v. Bergerson*, 218 M 398, 708 P.2d 1010 (1985). However, compliance with the statute requires at least an attempt to equalize both area and population. Gerrymandering is prohibited, and any redistricting plan must be reviewed and approved by the District Court Judges in Ravalli County. §7-4-2102(2), MCA.

### **Judicial Review**

If the voters adopt a change in local government, the change may be challenged in court for 60 days after the election. During that time, ten (10) or more registered voters may petition for judicial review of the validity of the procedure by which the amendment to the plan of government was adopted. §7-3-154, MCA. Such a challenge will invalidate the adoption of the changes only "if it is shown that the error or omission materially and substantially affected" the adoption of changes. *Id.* If not so challenged, the validity and process of adopting the changes are conclusively presumed lawful.

### **Course of Action**

If the BCC desires to propose to the voters of Ravalli County a change or changes in the existing form or plan of government, it may do so by adoption of an ordinance. The normal course of public notice, public meetings and readings for the adoption of an ordinance must be followed. Our office stands ready to assist you in the ordinance process, and in drafting of the ordinance language, to accomplish the BCC's goals that are consistent with the legal issues outlined above.

*Lisa S. Burnett*

**CERTIFICATE  
ESTABLISHING THE RATIFIED PLAN OF GOVERNMENT  
FOR RAVALLI COUNTY, MONTANA**

On November 7, 2006, a majority of Ravalli County voters amended the alternative COMMISSION FORM of government of Ravalli County to 1) increase the size of the commission to 5 members; and 2) change the term for commissioners to 4 years. *Ravalli County Election Returns* recorded November 17, 2006. Judicial review affirmed these amendments in *Thomas v. Ravalli County*, Twenty-First Judicial District Cause No. 06-577, closed April 8, 2010.

The ratified plan of government for Ravalli County, Montana, is therefore currently the COMMISSION FORM under 7-3-401 et seq, MCA, amended as follows:

**I. FORM OF GOVERNMENT:**

**7-3-401. Commission form.** The commission form consists of an elected commission and other elected officers as provided in this plan. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials.

**7-3-402. Nature of government.** This form shall have general government powers.

**7-3-403. Role of presiding officer of commission.** The presiding officer of the commission shall be referred to as the chairman. All members of boards and committees must be appointed by the chairman with the consent of the commission. The chairman must be recognized as the head of the local government unit and may vote as other members of the commission.

7-3-404 through 7-3-410 reserved.

**II. GENERAL STRUCTURAL SUBOPTIONS:**

**7-3-411. General structural suboptions.** Ravalli County's plan of government further defines the structural characteristics of the form by including the following:

**7-3-412. Selection of commission members.** The commission members shall be nominated from the district in which the member resides and elected at large. The *Apportionment Plan* describing the current commissioner districts is attached.

**7-3-413. Type of election.** Local government elections shall be conducted on a partisan basis.

*Future: Commission*

**7-3-414. Chairman of commission.** The Chairman of the commission must be elected by the members of the commission from their own number for a term established by ordinance.

**7-3-415. Administrative assistants.** The commission may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

**7-3-416. Terms of commission members.** Commission members shall be elected for overlapping terms of office.

**7-3-417. Size of commission and community councils.** The size of the commission shall be five (5) commissioners.

**7-3-418. Terms of elected officials.** The term of office of elected officials may not exceed 4 years.

**7-3-419 through 7-3-430 reserved.**

### **III. ADDITIONAL STRUCTURAL SUBOPTIONS:**

**7-3-431. Additional structural suboptions for county and consolidated governments.** Ravalli County's plan of government further defines the structural characteristics of the form by including the following suboptions. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

**7-3-432. Legal officer.** A legal officer, who shall be called the county attorney, shall be elected.

**7-3-433. Law enforcement officer.** A law enforcement officer, who shall be called the sheriff, shall be elected.

**7-3-434. Clerk and recorder.** A clerk and recorder shall be elected.

**7-3-435. Clerk of district court.** A clerk of district court shall be elected.

**7-3-436. Treasurer.** A treasurer shall be elected.

**7-3-437. Surveyor.** The office of surveyor has been consolidated with the office of treasurer, which is elected. *Ravalli County Resolution No. 684.*

**7-3-438. Superintendent of schools.** The office of superintendent of schools has been consolidated with the office of clerk and recorder, which is elected. *Ravalli County Commissioner Journal 14-476.*

7-3-439. Assessor. The office of assessor has been consolidated with the office of treasurer, which is elected. *Ravalli County Resolutions No. 468 and 684.*

7-3-440. Coroner. The office of coroner has been consolidated with the office of sheriff, which is elected. *Ravalli County Commissioner Journal 7-558.*

7-3-441. Public administrator. A public administrator shall be elected.

7-3-442. Auditor. The office of auditor has been consolidated with the office of county attorney, which is elected. *Ravalli County Resolution No. 467.*

I, J.R. Iman, Chairman of the Board of Ravalli County Commissioners, do hereby certify that this is the Plan of Government as ratified by the voters of Ravalli County.

Dated this 10<sup>th</sup> day of January, 2011.

  
\_\_\_\_\_  
J.R. Iman, Chairman

ATTEST:

  
\_\_\_\_\_  
Regina Plettenberg  
Ravalli County Clerk & Recorder



## Certificate of the "Plan of Apportionment" of Board of County Commissioner Districts

If approved by electors in the Special Election, Ravalli County shall be reapportioned into five County Commissioner Districts for the purpose of apportioning seats to the Ravalli County Board of County Commissioners. These five separate districts shall reflect equal representation and authority on the Ravalli County Board of Commissioners. The area of each District shall be as contiguous, compact and equal in population as possible. If voters retain three County Commissioner Districts then the current districts, as reflected in Commissioner Resolution 1304 and if verified as accurate, will remain unchanged. The following descriptions shall describe the five districts utilizing the current precinct boundaries known to exist June 2006 and the US Census 2000 Block Data provided by Ravalli County GIS Department:

District 1 The boundaries of the current precincts 1,2,3,4,5 and those parts of precincts 6 and 8 that lie west of US Highway 93

District 2 The boundaries of the current precincts 7 and 9 and that part of precinct 6 that lies east of US Highway 93

District 3 The boundaries of the current precincts 10,11,12,13 and that part of precinct 8 that lies east of US Highway 93

District 4 The boundaries of the current precincts 14,15,16,18

District 5 The boundaries of the current precincts 17, 19, 20, 21, 22

The final adopted version of the Plan of Apportionment complete with maps and population numbers will be available for voter examination no later than 30 days before the special election. We are making every effort to produce these materials as soon as possible.

Note: The information above was compiled in June 2006 based on information provided by Ravalli County officials. We have been notified by county officials that this information may be incorrect. For the purposes of this Final Plan the boundaries described above will serve as the boundary description until and unless we are provided with additional data by the county to correct this. We understand this impacts your ability to analyze this Plan. We are sorry for this inconvenience to the voter and will work with the county to bring you an accurate map as soon as humanly possible. We are retaining the right to amend this Plan at a later date to accurately and legally apportion boundaries under MCA 7-4-2102.

We, the Ravalli County Local Government Review Study Commission, do hereby certify that this is the Five Commissioner Districts Plan of Apportionment for Ravalli County, Montana approved by the Study Commissioners of Ravalli County, Montana.

In testimony whereof, we set our hands.

Vicky Bohlig

Howard Anderson

Alec Sutherland

Glenda Wiles ex officio

Done this 11 day of SEP 2006 in Hamilton, Montana.