

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2018-015

**TO:** Mayor John Engen, City Council, Dale Bickell, Mike Haynes, Don Verrue, Denise Alexander, Mary McCrea, Andrew Boughan, Carla Krause, John Wilson, Kevin Slovarp, Troy Monroe, Marty Rehbein, Kirsten Hands, Kelly Elam, Jeff Brandt, Gordy Hughes, Mike Brady, Scott Hoffman

**FROM:** Jim Nugent, City Attorney

**DATE** August 15, 2018

**RE:** Each statutory method of municipal annexation is a separate, independent and distinct method of municipal annexation.

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### FACTS:

Inquiry has recently arisen pertaining to utilization of the petition method of annexation when most, but not all of the properties to be annexed have petitions for annexation.

### ISSUE(S):

- (1) Are each of Montana's municipal statutory methods of annexation separate, independent and distinct methods of annexation?
- (2) Does the city governing body have the ability to utilize the petition method of annexation when most, but not all properties to be annexed are subject to the petitions to annex?

### CONCLUSION(S):

- (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, independent and distinct.
- (2) Montana's statutory annexation by petition method of Municipal annexation allows annexation to occur if owners of 50% or more of the total land area to be annexed have petitioned for annexation.

### LEGAL DISCUSSION:

After the 1974 enactment of Title 7, Chapter 2, Part 47 MCA the 1979 and 1981 Montana State Legislature expressly adopted Municipal annexation law explicitly establishing each statutory method of annexation as a separate, independent and distinct method of annexation.

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, independent 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 west of the 39<sup>th</sup> street city fire station 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, independent 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, independent 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.

The "Annexation by Petition" method of municipal annexation is set forth in title 7, chapter 2, part 46 MCA. Pursuant to subsection 7-2-4601 (3)(a)(ii) MCA the petition method of annexation may be selected by the City as the statutory method of annexation utilized when there are petitions to be annexed signed by "(ii) the owner or owners of real property representing 50% or more of the total area to be annexed." (Emphasis added.)

#### **CONCLUSION(S):**

(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 statutory annexation by petition method of municipal annexation allows annexation to occur if owners of 50% or more of the total land area to be annexed have petitioned for annexation.

OFFICE OF THE CITY ATTORNEY

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