THE HANDBOOK
AN MSU LOCAL GOVERNMENT CENTER E-BRIEF
HIGHLIGHTS

Municipal Officials Handbook, Pgs. 5-6

1.102   Municipality Defined

Authoritative sources define the American municipality as having four essential characteristics, each of which is considered in detail in sub-section 1.103 immediately below. To exist as a municipality in the United States the entity must have:

1.   Law making authority authorized by the state;

2.   Legal personality such that it can sue and be sued and hold and dispose of property;

3.   A local court that enforces local law and

4.   A defined territorial area.

However, in Montana law, a municipality is defined simply as an entity that incorporates as a city or town (7-1-4121(9), MCA). Interestingly enough, this language sometimes causes confusion in as much as none of Montana's 129 presently incorporated municipalities can produce a document that even resembles the "articles of incorporation" that would usually define the purpose, structure and officers of a private corporation. In Montana, a city or town is brought into existence as a public corporation either directly by an act of the state legislature or indirectly pursuant to law enacted by the state legislature. The first ten Montana communities to become incorporated municipalities were "incorporated" by an act of the Territorial Legislature during the period between 1864 (when Virginia City was incorporated) and 1885 (when Billings was incorporated). Later, communities that met the statutory criteria for incorporation and that wished to form a city or town government were brought into existence (i.e. became incorporated municipalities) by local elections that were conducted pursuant to the laws enacted by the Montana State Legislature. (See Table 1.1 for a list of incorporated municipalities in Montana and the probable year of incorporation.)

For example, the present municipal incorporation statute (7-2-4201, MCA) requires that a board of county commissioners order an election on the question of municipal incorporation when it receives a petition to do so containing the signatures of two-thirds of not less than 300 electors residing within an area of one square mile. If and when approved by the voters, municipal governing officials are then elected and the community becomes an incorporated municipality whose purpose, organization and governing powers are set forth in

law. In short, there are no municipal "articles of incorporation" in Montana.

Here, it should be noted that 34 municipalities (including the two consolidated governments of Anaconda-Deer Lodge and Butte-Silver Bow) have adopted a self-government charter pursuant to state law and Article XI, Section 5 of Montana's 1972 Constitution. Even though these municipal charters define the powers, structure, privileges, rights and duties of the local government, consistent with state law, the charter itself is not an instrument of municipal incorporation.

Finally, in Montana law, there appears to be no significant distinction between the terms "municipality," "incorporated municipality," "city" and "incorporated city." Similarly, towns are, by definition, an "incorporated municipality," different than an "incorporated city" only because of its population based municipal classification. (See Section 1.2 for a discussion of Montana's municipal classification system.)

1.103 Disincorporation

Under Montana law (7-2-4901 and 4902, MCA) a municipal corporation ceases to exist under either of two circumstances: (1) If a city or town council fails to function for a period of two years, the municipality shall automatically be disincorporated. (2) A disincorporation petition signed by fifteen percent of the municipal electors will require that the governing body place the question of disincorporation on the next general or primary election ballot. If 60 percent of the voters approve, the board of county commissioners will adopt an order declaring that the municipality is disincorporated. The assets of the former municipality pass to the county to be used to liquidate any residual obligations.

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