

April 11, 2005

VIA US MAIL

Ms. Donna Wadsworth
Montana Rural Water Users Association
925 – 7th Avenue South
Great Falls, MT 59405

Re: Water and Sewer Questions

Dear Donna:

Harry Whalen has indicated that there are a couple of questions that are frequently directed to your office with respect to **conduct and operation of a water and sewer district board (the “Board”)**. He requested that I send you a letter addressing those issues so that you might better advise the water and sewer districts that contact you.

Question: May the chairman or president of the Board vote in all matters or only in the case of a tie vote among the board members?

Answer: The president of the Board is entitled to vote on all matters before the board.

Discussion: Section 7-13-2271, M.C.A. requires that the board of a water and sewer district at its first meeting elect one of its members as president. Section 7-13-2272, M.C.A. provides that the duties of the president are to sign all contracts on behalf of the district and perform other duties as the Board delegates. **There** is nothing in the statutes that would suggest that the president is not entitled to vote. Unlike a mayor, who is a member of the executive branch rather than the governing body, and who presides over meetings of a city council in that capacity and thus can only vote in the case of a tie vote among council members, the president of a water and sewer district Board is an actual elected member of the governing body who also serves as president, which includes serving as the presiding officer.

Further, since the number of board members is established by law as either 3 or 5, and a quorum for meeting purposes is a majority, if the president were not allowed to vote, it would be hard to count that person toward a quorum and the chances of a tie vote would be exacerbated.

Question: Are water and sewer district board members required to take an oath of office?

Answer: There does not appear to be any statutory or other requirement that they do so.

Discussion: Article III, Section 3 of the Montana Constitution requires that the members of the legislature and all executive, ministerial, and judicial officers (of the State) shall take and subscribe the following oath of affirmation before they enter upon the duties of their offices: I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution of the United States and the Constitution of the State of Montana, and that I will discharge the duties my office with fidelity so help me God.

This Constitutional provision is implemented in Title 2, Chapter 16, Part 1 of Montana Code Annotated, but by definition really applies only to the public offices of the state.

There are a number of statutory provisions which require specific positions to take oaths of office. In particular, there is Section 7-1-4137, M.C.A., which provides that every elected and appointed municipal officer shall take the oath of office prescribed in Article III, Section 3 of the Montana Constitution, and that before such officer performs any official duties, a certified copy of the oath of office shall be filed with the county election administrator if the office is an elected one, or with the city clerk if the office is an appointed one.

Section 7-4-2205, M.C.A. provides that each of the county officers named in Section 7-4-2203, M.C.A. shall take an oath of office on the last business day in December following their election, but does not specify what the oath is. Presumably they are administered the oath set forth in the Montana Constitution and used by city officials.

Likewise, Section 20-1-202, M.C.A. provides that "Any person elected or appointed to any public offices authorized by this title (Education) shall take the oath of office before qualifying for and assuming the office."

As Harry has pointed out, the Montana Recall Act, which applies to all State and local government elected officials, includes the violation of an oath of office as grounds for recall. Presumably since there is no statutory requirement that water and sewer board members are required to take an oath of office, that ground for recall of a board member would not be available.

The other grounds presumably would be: physical or mental lack of fitness, incompetence, official misconduct, or conviction of a felony offense enumerated in Title 45.

It may be that legislation should be proposed that would specifically require that water and sewer board members and officers take an oath of office.

Very truly yours,

Mae Nan Ellingson

CC: Harry Whalen