

Ken Weaver

From: Ken Weaver [upokw@montana.edu]
Sent: Sunday, February 06, 2005 2:14 PM
To: 'winktuss@yahoo.com'
Cc: 'upojm@montana.edu'
Subject: Your Questions

Mr. Tuss,

My colleague Judy Mathre asked that I reply to your inquiry.

First of all, there are no "incorporation papers" for Hot Springs or any other Montana municipality. Municipal governments are "incorporated" either as a result of direct legislative action (as in the case of the first ten incorporated municipalities starting with Virginia City in 1864 by the territorial legislature) or directly by a vote of the resident electors pursuant to the municipal incorporation statutes of Montana (as was the case of Hot Springs in 1929).

Secondly, we cannot confirm your assertion that the recommendations to the Hot Springs voters made by the 1976 study commission, as detailed in their final report were, in fact, approved by the voters. Our records indicate that there were 194 votes for the existing form of government and 71 votes for the proposed "alternative" form. If you have obtained a different vote outcome from your county clerk and recorder, we would appreciate knowing so that we may validate your assertion and, if necessary, correct our reporting at page 110 of the *Montana Voter Review* text. (see also *Constitutional Convention Study No.16 "Local Government"* by Jerry R. Holloron.)

Third, you should review the provisions of 7-3-113, MCA and, by reference, Part 2, Chapter 3, Title 7, MCA to determine the present form, structure and powers of the Hot Springs municipal government. Recall that these statutes were reviewed in detail by me during our December workshop for study commissioners. You will find copies of these statutes at pages 88-92 of your Study Commission Handbook.

Finally, your study commission should proceed with its study pursuant to law, perhaps noting especially the permitted scope of your recommendations set forth at 7-3-185(2), MCA.

If you have additional questions, please contact us.

Ken Weaver

-----Original Message-----

From: Judy Mathre [mailto:upojm@montana.edu]
 Sent: Saturday, February 05, 2005 2:32 PM
 To: upokw@montana.edu
 Subject: Fwd: Re: Handbooks

>Comment: DomainKeys? See <http://antispam.yahoo.com/domainkeys>
 >DomainKey-Signature: a=rsa-sha1; q=dns; c=noFWS;
 > s=s1024; d=yahoo.com;
 >
 >b=nDSDn3K+B3BWQyc9EQQCZIQUL2zGz/kxPLPd7XX639MZgFVc1i3nb0nkVdn02Q2k4oJJNNAgLKu0SCqZt

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>;
>Date: Sat, 5 Feb 2005 10:54:35 -0800 (PST)
>From: Bill Tuss <winktuss@yahoo.com>
>Subject: Re: Handbooks
>To: Judy Mathre <upojm@montana.edu>
>X-Security: message sanitized on mail1.msu.montana.edu
> See <http://www.impsec.org/email-tools/sanitizer-intro.html>
> for details. \$Revision: 1.147 \$Date: 2004-10-02 11:16:26-07
>X-Security: message sanitized on pollux.msu.montana.edu
> See <http://www.impsec.org/email-tools/sanitizer-intro.html>
> for details. \$Revision: 1.148 \$Date: 2004-12-19 11:59:17-08
>X-Spam-Status: No, hits=2.0 required=8.0
> tests=IN_REP_TO,DEAR_SOMEBODY,SPAM_REDIRECTOR,SUPERLONG_LINE
> version=2.31
>X-Spam-Level: **
>
>Dear Judy,
>
>I still have not found the towns incorporation papers. I have contacted
>the Secretary of State and Sanders County Clerk and Recorder, plus
>requested the local government to make a concerted effort to find the
>papers. To date they have not been found. In addition, I requested the the
>mayor and council seek legal counsel from the town attorney regarding
>procedure. Although the county commissioners minutes from 1928 show that
>the county did a voting canvass to verify the votes for incorporation
>there is no record that the town actually took the steps to incorporate.
>
>In my search for the Hot Springs Plan of Government (incorporation papers)
>I did locate a 1976 Final Report/Certificates which was passed by the
>voters, so there was a local government review. This is contrary to your
>records. I submitted the 1976 final report to the mayor and council last
>week. Notably, there are powers/authority to establish a Treasurer and up
>to two Administrative Assistant positions. Since 1976 these positions have
>been available and unknown to recent or present administrations. Presently
>the town clerk functions as the treasurer, however, this position(duties,
>authority, procedures) is not written into the Book of Ordinances. The
>Admin. Assistants have never been implemented. In effect the Treasurer
>exists and functions without any authority.
>
>As you can see the commission is uncovering facts that are directly
>related to the form of government and its delivery of services.
>
>I would like to know from the government center if you ever had a
>situation where the incorporation was voted on, however, not written?
>Secondly, without the incorporation papers one does not know the
>"government framework", or its powers, or authority? Thirdly, how can a
>commission proceed effectively without the fundamental "constitutional" document?
>
>Sincerely,
>
>William D. Tuss, Chairman
>Hot Springs Local Government Study and Review Commission
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>Do you Yahoo!?

2/6/2005