

Virginia City

Dear Fellow Study Commissioners:

Enclosed, you will find a possible final report to be submitted to the townspeople. You will not find it to be earth-shaking or a dynamic change to a new form of government.

I have weighed this issue (Government reform) for many months now and feel that without major public outcry from the majority of the citizens, it would be a disservice to press for a change that does not seem wanted by the majority.

Our Study Commission is not cohesive in thought or purpose and perhaps in the long run this is not bad. This difference in thinking by individual members as well as the time that has passed since our inception has allowed me to come to the following conclusions:

- we at this time do not have the unity to make changes.
- no particular form of government will solve all the presumed problems.
- any form of government has it's weaknesses and can be manipulated if so desired.
- any form of government can be made to work, integrity, honesty and a strong effort to be ethical will almost certainly guarantee success.
- vigilance on behalf of the voters is certainly a must.
- only three (3) ways to change government - vote incumbents out (time consuming, not easy to do), lawsuits (time-consuming, money consuming), newspaper (maybe public attention can cause change).
- a small number of questionnaires returned wanted to vote for mayor. These people have not followed up by any attendance and do not seem to be a significant number.

I tried to incorporate some of these thoughts in this possible final report. Please, should you have ideas to add, parts to delete or even the strong feeling to add a separate piece of your own - do it.

I would like us all to be able to sign-off on a Study Commission report to the people. As an individual, there would also be no problem including your own thoughts under your name as part of our total effort.

Thanks for the time you have all put in. Please read the enclosed. When everyone has read and thought this through we will meet. You tell me when you are ready.

Thank you.

Respectfully submitted,
John Boles

LOCAL GOVERNMENT STUDY COMMISSION
VIRGINIA CITY, MONTANA

TO: Virginia City Residents:

The Virginia City Local Government Study Commission came into existence as a result of Virginia City voters requesting it on their November 2, 1994 ballot.

The Study Commission members are Patricia Vanderbeck, Phillip Mason, Sr., Howard Butler, Robert (Dude) Erdall, and John Boles.

During the past year and a half, the Study Commission attended a two day meeting on Local Government held at MSU; sent out a questionnaire to all registered voters of Virginia City; held a public meeting to discuss the results of the questionnaire; interviewed past members of the city council, and have held numerous meetings to decipher and perhaps draw some workable conclusions from the information gained and discussion held.

As you are aware, Virginia City operates under a commission/chairman form of government. This form (our form) came about as a result of the last Study Commission held in 1976. It has five (5) council members elected at large and a mayor elected by and from the council membership. Prior to this present form, Virginia City functioned under a mayoral form of government.

The past commission also introduced non-partisan elections and eliminated voting districts. These changes should be and are a benefit to Virginia City as political affiliation nor area of town (residence) should hamper electing the most qualified people for the position of governing.

The present Study Commission has looked into the several forms of government available. We had hoped one of the available types would perhaps handle, in a more efficient manner, Virginia City's Governmental needs.

A brief review showed us the following:

Town Meeting: meets once a year. This form does not meet Virginia City's requirements if for no other reason than our busy summer season.

Commission-executive (mayor-council) Elected mayor and elected commissioners by the voting public. The last study commission review and voting public decided to change from this form.

Commission-manager: city manager is hired from the outside and handles the city's day to day operation. The biggest problem with Virginia City using this form of government is strictly financial. City Managers, fresh out of school, demand starting wages of \$25,000 to \$30,000. Because this

manager could be eager to advance his or her career, we could expect to hire a new manager every few years.

Charter: written constitution for the government. This, perhaps, holds the best solution to some of the concerns held and voiced by many Virginia City citizens. We obtained a copy of the Ennis Charter to peruse and perhaps to use as a guideline. After reading the Ennis Charter, we were of the opinion this particular charter (Ennis) would not benefit Virginia City.

We contacted Ken Weaver, head of the MSU Local Government Study, to hopefully obtain more information on the Charter and to receive help. Mr Weaver and his assistant Judy Mathre said they would write a wrap-around charter to fit our commission/chairman government. On receiving this new charter from MSU, we quickly realized this charter was no different, and in fact, word for word of the Ennis Charter. This did not meet our needs. We submitted four (4) trial questions to Mr. Weaver, Local Government Center, MSU, Bozeman concerning our ability to include checks and balances into the charter form of government. His response of April 22, 1996, states the questions and his response (see enclosure). In our opinion, these responses, suggest this undertaking is far beyond the description of our duties, the commission's legal expertise and financial budget and the current will of the citizens of Virginia City.

It would seem to us, to revamp or change our city government to a charter form would need to be initiated from the top (city council) and be in compliance with the needs and wishes of the citizens of Virginia City.

We went from a period of possible expectations of putting concrete, workable ideas on the ballot for the voters of Virginia City to realizing our study commission ideas, at best, would be presented to the registered voters only in the form of a final report.

The concerns, wishes, the strongly voiced opinions presented are issues that could be addressed by the present council and in most cases could be implemented in a reasonable period of time.

It appears to us, the implementation of any of the ideas listed would cause no losers or loss of council authority.

There will not be an issue or change of government presented for vote in the June primary. This does not mean the ideas set forth and the issues discussed in our final report are not valid, nor should they be ignored.

Our questionnaire submitted to Virginia City voters consisted of twenty (20) questions. Some of the questions were general and received general answers. Some were very specific and received direct responses.

The questionnaire was not responded to by all, but appeared to have enough diversity in answers as to infer not only one segment or group responded.

The following (in no particular order) questions and answers seem to speak the loudest.

1. Q: Should the city council and/or mayor have more or less power?
A: Council more. Mayor less.
2. Q: What does the council do poorly?
A: Poor communication.
3. Q: Should voters and residents have more voice in council decisions?
A: More.
4. Q: Do you feel the city council is representative of the whole community?
A: No!
5. Q: Would you consider consolidation of city and county government?
A: No!!
6. Q: Do you feel voters should be given the chance to vote directly for mayor of Virginia City?
A: Yes!!
7. Q: Do you think the city council needs a stricter policy of checks and balances in major expenditures of money?
A: Yes!
8. Q: Do you feel the present form of government is accountable enough to residents in making major decisions?
A: No!

Additional remarks or feelings expressed on the returned questionnaires to be studied or weighed are the following:

-To assist the town in setting long term goals to the benefit of all residents and to help in the planning stages to meet those goals.

-To explore the ordinance fairly and evenly across the board.

-Individual council members should be more outspoken.

-Council takes input personally instead of businesslike.

-Better communication

-Council not independent enough in their own thoughts.

- Getting citizens more involved in city government.
- No checks and balances.
- More personal contact
- Talk to the people.
- Discuss without prejudice.
- Send out questionnaires.

The 1976 Local Government Study Commission presented to the voters of Virginia City an opportunity to change from a mayoral form of government to commission/chairman form. The voters went to the election polls and approved their new form of government.

The present study commission has no minutes or notes from the 1976 commission. We don't know their thinking or reasoning as to why the recommendation for change - only the results.

Our commission/chairman form of government used in Virginia City, is truly unique in Montana as there is only one other location, Broadview, also using this form.

The Study Commission Handbook issued by MSU states on page 67, under the heading of Evaluation of Form,

"The identifying characteristic of the Commission-chairman form is it's fusion of legislative and executive powers in one person... Thus, if the chairman and the commission majority are of one mind and/or one party, the stage could be set for decisive and unobstructed government.

On the other hand, the selection process and nature of the chairman position can be grounds for uneasiness. From the perspective of accountability, the voters are not able to choose directly the person who will exercise substantial executive powers. And, from this perspective of competency, the possibility exists that no commission member will measure up to the demands of the chairman.

Given these possible drawbacks of the commission-chairman form, its recommendation by a study commission should be a carefully considered decision. The form tends towards either big success or big failure and perhaps is risky."

Partners in a business do everything legally possible to make it a successful relationship. On a national level or on our local level this same type of partnership exists between elected officials and the people they serve. Just as the business partners work together, this governmental partnership requires effort from both the elected officials and the voting public, for it to be

successful.

Public concern, doubts, criticisms usually come about from a sense of business being done in private by the council and a fear of the unknown (lack of factual information). Good government starts at the top and requires of each sitting council member to fulfill the elected position with the utmost honesty, integrity and good will.

Likewise, it is the requirement of the governed to be vigilant, informed, and attentive of their government. The registered voter has a responsibility to question when they do not understand, to provide knowledge and information where needed and to support the council when straight forward answers are supplied.

The combination of cooperation and goodwill of both government officials and the voting public may allow our present form or any form of government to work and be successful.

These two visions of government are borrowed from other sources, but stand on their own.

Optimistic Dreams of Virtuous People

Plato's Republic is the first known example of someone advocating moral persuasion. Plato thought "philosopher-kings"(what some have referred to as "benevolent dictators:) should rule and instill virtuous behavior in the masses. His vision of a utopian society was based on an untested assumption that has haunted all utopian experiments for the last two thousand years. Plato had an optimistic view of people's willingness and ability to produce good. People were seen as having an untapped potential for virtuous behavior. All that was needed to realize good was the centralization of power in the hands of enlightened leaders who would provide the proper instruction and free citizens from constraints imposed by the oppressive forces of ignorance, greed, and social prejudice.

American Pessimism Built Democracy

American government was founded on a pessimistic assumption about the human potential for production good. Our forefathers established a government based on law, not the good intentions of people. They carefully designed a system of checks and balances, involving the executive, legislative and judicial branches of government. Experience had taught them that individuals could not always be trusted to do what is right for the country, and sometimes not even what was right for themselves. Rules were made predictable and secure by embedding them in law. Free speech, freedom of religion, freedom of assembly, private property, and an open market economy all were

seen as means for protecting citizens from falling under the control of a powerful ruler or elite group.

This concludes our report to you the registered voters of Virginia City. Thank you for your support of the review of our government.

We the Virginia City Study Commission do hereby agree with this document.

In testimony whereof, we set our hands.

Done this _____ day of _____, 1996
in Virginia City, Montana.

John Boles, Chairman

Phillip E. Mason, Sr.

Robert Erdall

Patricia Vanderbeck

Howard Butler

Gary McKay, Ex-officio



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April 22, 1996

Mr. John Boles, Chairman
Virginia City Study Commission
P.O. Box 292
Virginia City, MT. 59755

John,

Your letter of April 1, 1996 asked for our comment on several proposals under consideration by your Study Commission for inclusion in your proposed charter for the Town of Virginia City. Please recall that I am not an attorney and that the following comments are not a legal opinion but rather suggestions for consideration by the Study Commission and review by competent legal counsel.

1. May the charter include language precluding the possibility that the county attorney may be appointed to serve as the city attorney for the town?

I am aware of no provision of law that would nullify such language. For example, I note that the authority to appoint a city attorney is vested in the mayor subject to the approval of the council (7-4-4602, MCA). I also note that third class cities "may" retain the county attorney to provide legal services with the consent of both governing bodies (7-4-4606, MCA). (Oddly, commensurate discretionary authority does not seem to have been delegated to "town" governments). Moreover, I note that 7-3701(2), MCA provides that "Charter provisions establishing legislative, executive, and administrative structure and organization are superior to statutory provisions".

Please note I have not expressed an opinion concerning whether such a charter restriction is a good idea or not. In that regard I am inclined to believe that precisely because Virginia City is a small town, you may wish to maintain the government's flexibility in its appointment powers. As an alternative to charter restriction, you might consider using a supplementary report to recommend that the Town Council adopt an ordinance defining the qualifications of the town attorney, pursuant to 7-4-4104(2), MCA.

2. I don't quite understand your question concerning the budget.

In any case, I do not believe your Charter should deal with the municipal budgeting process which is delineated in "Municipal Budget Law" as set forth in detail at Chapter 6, Part 42 of Title 7. Moreover, this entire set of statutes is in the process of being rewritten with very substantial revision. If, on the other hand, you are concerned that the town government is not

complying with the law concerning budgeting, I do not believe an additional charter requirement to do so will be an effective or appropriate remedy. Usually, an audit and an alert news reporter or concerned citizen will do.

3. May the charter include language requiring that any substantial debt to be incurred by the town be referred to the electorate for approval?.

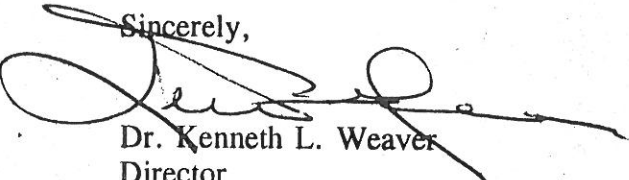
With respect to town debt incurred by the issuance of bonds, present law already requires that bonds pledging the general credit of the town must first be submitted to the voters (7-7-4221, MCA). In general, this requirement does not apply to "revenue bonds" such as water and sewer bonds which are generally repaid by revenues from user fees (7-7-4221(2), MCA). In view of the permissive language used in the second paragraph of this statute, I believe that a charter may require that revenue bonds also be approved in advance by the voters. Recall however that elections take time and incur costs. If you intend to pursue this matter please call me and I will seek a legal opinion to confirm or disconfirm my judgement on revenue bonds.

4. May the charter include language that requires the town government to include a repayment plan as part of the resolution or ordinance authorizing the incurrence of debt?

I believe that such charter language is not precluded by law however you may wish to make this an item in a supplementary report recommending that the Town Council adopt an ordinance to that effect.

Finally, if you do decide to pursue any of these items we will be pleased to assist in drafting appropriate language to be included in the charter as part of our services to the Study Commission.

Sincerely,



Dr. Kenneth L. Weaver
Director