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A PROPOSAL FOR IMPROVEMENT OF
REDISTRICTING AND PRECINCT PROCEDURES
FOR THE STATE OF MONTANA

By

Daniel A. Obermeyer

B.Arch., Montana State University, 1971

Presented in partial fulfillment of the requirements for
the degree of

Master of Public Administration

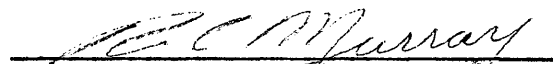
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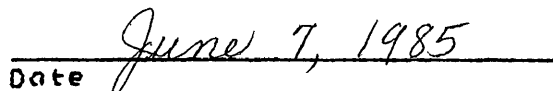
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CHAPTER I

PROSPECTUS

THE PROBLEM OF UNEQUAL REPRESENTATION AND INEFFICIENT ELECTION ADMINISTRATION.

Introduction

This paper presents a means by which state and local governments may provide for more equal representation and more efficient management of the elections process.

Statement of the problem

Since the 1980 census, units of government have been redistricting their electoral districts, because in a landmark 1962 decision, the US Supreme Court said the Constitution requires that "as nearly as practicable one person's vote in a congressional election is to be worth as much as another's." The one person-one vote rule has been applied to all legislative elections from federal to

municipal levels of government.

There have been problems in achieving the one person-one vote rule. While many of the problems relate to maneuvering to establish or maintain political power, also known as "gerrymandering", this paper will deal with the statutory barriers to a coordinated redistricting of state and local electoral districts in the State of Montana.

There is little coordination between the county election offices, the Secretary of State, the State Reapportionment Commission, city councils, county commissioners, county superintendents of schools, and special electoral districts. The statutes require only consideration of the problems, not the absolute coordination of efforts. Section 13-3-102(3) Montana Codes Annotated (MCA) states:

"The officials responsible for preparing a districting or apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan."

There is little statutory guidance regarding the problems of conformity of boundaries and the authority that the election administrator has over decisions on the plan. For example, the 1980 redistricting of state legislative districts

For example, the 1980 redistricting of state legislative districts isolated some voters from other electoral districts, such as school districts and city wards. Examples range from the three residents of one block in Missoula County being separated from their school district by the redistricting to the need for nine special precincts in the city of Missoula to provide for an acceptable plan of city wards, school districts, and state legislative districts. This means these voters will vote at school elections in one place and for county and state elections at another and, perhaps, city elections at a third location. Missoula County has nine split precincts where there are less than 100 persons within an area defined by state, school, or municipal district boundaries. Split precincts are precincts which are split by two or more electoral districts. Voters from these split precincts are grouped with other electoral districts into a precinct to minimize the costs of the elections. (MAP 1). These split precincts cause problems during the elections by complicating the election records and introducing the potential for errors. Split and substandard precincts increase the cost of each election by several thousand dollars per county.

Redistricting, as a result of the 1980 census, has brought these administrative problems to the forefront.

paper could result in statutory changes being proposed for the 1987 session of the legislature. If successful, this would allow time to propose changes to the boundaries of census districts adopted by the US Bureau of Census. In past decades all boundary changes to the census districts are made one to three years before the census.

The revision of redistricting statutes should benefit the elector in two ways. First, coordinated redistricting with guidelines would provide assurances for equal representation. Second, the elections process would be less costly and would simplify reporting the results of the elections.

The basic problem is the failure to coordinate the setting of electoral district boundaries. This failure has resulted in unequal representation and higher election costs. The problem stems from the lack of statutory clarity and criteria.

Review of Documents

Statutes and constitutions from other states have been reviewed to determine how other states are dealing with the problem of reapportionment and precinct management. This information is presented to assist in determining what

problem of reapportionment and precinct management. This information is presented to assist in determining what connections exist between forming electoral districts and precincts.

Few states have resolved the problem of coordinating the formation of electoral districts and precincts through statutory or constitutional language. These states have used general, permissive directives rather than mandatory or specific requirements.

Articles, journals and court cases have been reviewed to determine the trends and legal issues involved in reapportionment and precinct management which relate to the problem this paper explores. Research completed to date provided good criteria to guide the formation of electoral districts but is silent on the issue of precinct management.

Methodology

The research has involved gathering data on the size of electoral districts as it relates to the concept of "one person - one vote". This information is presented in a form that indicates the deviation from the ideal size. The ideal size of district is one which provides equal

population of 15,000.

Additional information has been collected to determine the sizes of precincts involved in the above electoral districts.

Data have been collected from Missoula County with rural and urban areas. Within this county, interviews with people in charge of elections have been conducted to assess problems and to determine the ideal precinct size given the concerns for good election management. Normally the ideal size is a function of the number of votes cast and the ability of election judges to handle the load with minimal mistakes.

Summary

The findings of this paper could lead to a proposal for statutory changes which address the problems or conflicts discovered in the research. These findings will also provide guidance to reapportionment and precinct boundary establishment commissions and administrative personnel.

CHAPTER II

THE CURRENT SITUATION FOR NATIONAL, STATE, LOCAL AND SPECIAL ELECTORAL DISTRICTS.

To understand the problems with electoral districts, precincts and election management, a review of the current situation is helpful. This review covers apportionment of congressional and state legislative districts, redistricting of local districts, setting special electoral boundaries and managing precincts and elections.

National and State Redistricting

Redistricting for congressional and legislative districts is primarily governed by the Constitution of the State of Montana, 1972, Article V, Section 14 Districting and apportionment:

(1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time period prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

State statutes also apply to state level redistricting in Title 5, Chapter I, Part 1, Sections 101 through 111 (Appendix A). These sections reflect much of what is found in the state constitution. They provide more detail on the selection process, address vacancies, restrict commission members from holding state legislative positions for two years, mandate state agency assistance, and require the Legislative Council to provide staff to the commission.

These statutes also detail the adoption process including public hearings and deadlines for action. The process for the State Apportionment Commission is displayed in table 1.

The State Apportionment Commission's action is keyed off the release of U.S. Census figures. Due to budget constraints these figures were not released in April, 1981, as originally proposed, but were delayed almost a full year. Since no change in the Census release process has yet been proposed, one may assume a similar timing of the release of census figures in 1990. There would be little change in the process in Montana if improvements are made in the release of the census information. Because of the biannual sessions, Montana could not reapportion its state legislative districts until the third year of the decade.

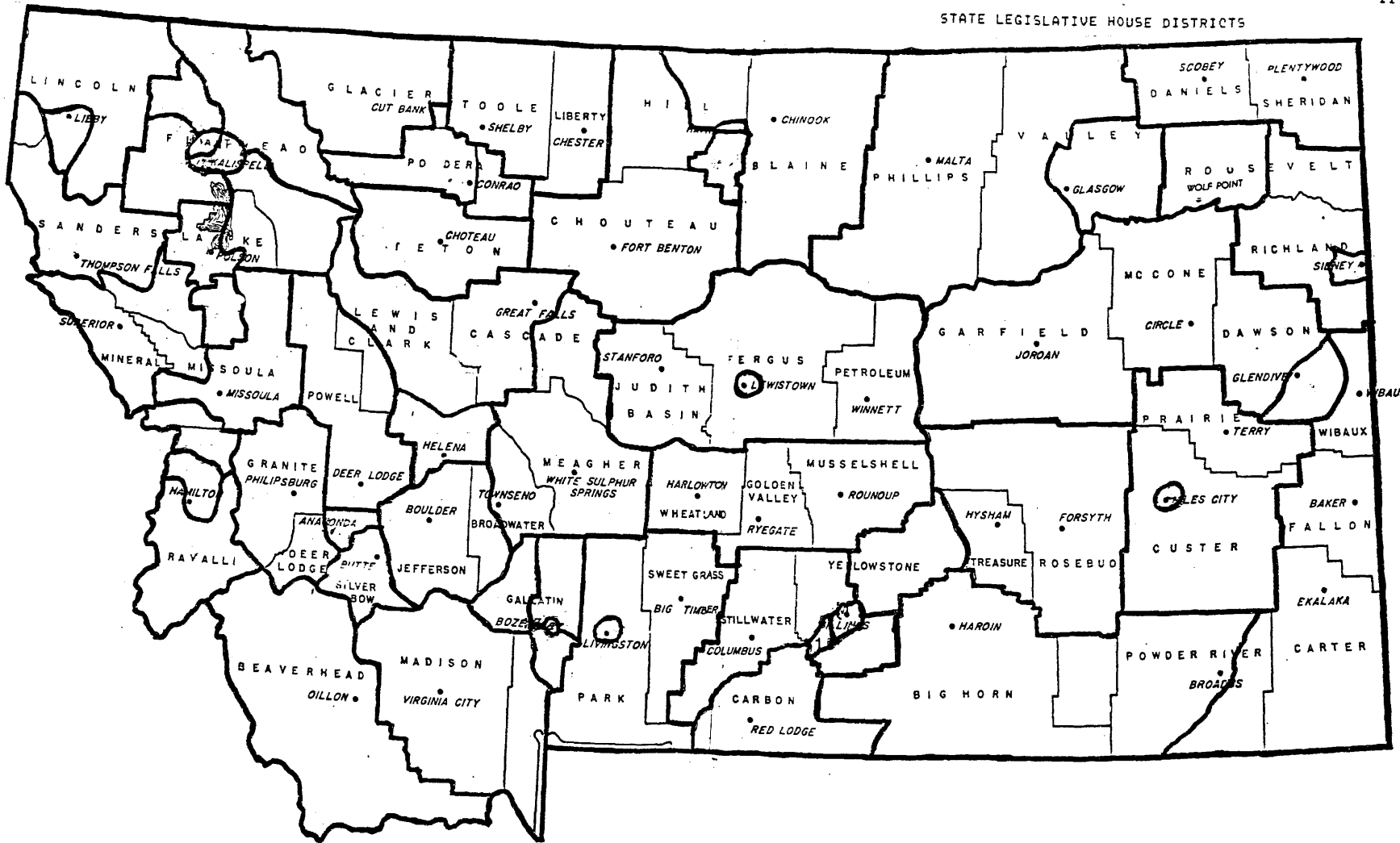
The only criteria provided by the apportionment commission statutes are that each district shall consist of compact and contiguous territory and shall be as nearly equal as practicable. The constitutional convention in 1972 provided for annual sessions. Annual sessions would have led to much more rapid redistricting after the federal census than took place after the 1980 census. Biannual sessions were adopted by a 1974 constitutional amendment. The 1980 redistricting did not happen until the 1983 session. The problem of delay in congressional

redistricting was corrected during the 1983 legislative session in House Bill 222.

Review of the state legislative districts shows that not all the districts are compact or contiguous as would seem practicable. Map 1 of state legislative districts may show what appears to be a compact and contiguous arrangement of districts; but, in Montana the topography plays an important role in defining contiguous. Mountain ranges and rivers will divide an area and isolate parts of it from other parts. A voter may not be able to get from one part of the district to another without having to leave the district. Also, it has been noted that some of the boundaries cause a great deal of inconvenience to some voters who must travel some distance to vote, sometimes leaving part of the district and passing through another district to reenter their assigned district. An example of questionable compactness and contiguousness would be House District 52 which contains parts of Missoula, Mineral, Lake and Sanders Counties. It would be difficult for a representative to relate to this type of district or to campaign effectively in it and reach all voters.

There are significant variations in the populations of state legislative districts. Variances in population range from a high of 8322 in House District #2 to a low of 7461

STATE LEGISLATIVE HOUSE DISTRICTS



in House District #98. This amounts to a deviation from the ideal size of +5.78 percent and -5.16 percent. This is a maximum deviation from high to low of 11.54 percent. The criteria used by the Apportionment Commission was to stay within 5 percent of the ideal district of 7867 persons per legislative district. While this standard seems to be acceptable in Montana, as no suit has been filed to challenge since the apportionment plan was finalized in mid-1983, a 5 percent average deviation for the ideal size allows a 10 percent maximum deviation for the largest to the smallest population in legislative districts. This maximum deviation of 10 percent should not be accepted. In other states, notably New Jersey, deviations of .69 percent were not accepted by the courts.

Local Government Redistricting

Redistricting of local governments is regulated by numerous statutes depending on the type of local government. The principal factor is whether or not the local government opts for representatives elected at large or elected from districts. Most general purpose governments in the state either elect representatives by districts, as in wards, or elect at large representatives from districts, as in county commissioners. Most self governing local governments elect representatives at large

with no requirement for districts. If the unit of local government is from the former group, it must redistrict with each federal census.

Local redistricting differs significantly from the state level because the elected representatives themselves do the redistricting for their own districts. The only check for the county is the district judge or judges and there is no check for municipalities except legal action. Again the criteria is minimal with the requirement for the population to be as nearly equal as possible. The county commissioner's district law has one additional requirement in that the area of the district shall be as nearly equal as possible.

In county governments the county commissioners must redistrict their own districts using the criteria found in section 7-4-2101 M.C.A. (Appendix A). The commissioner districts shall be as compact and equal in population and area as possible. An incumbent can not be redistricted out of his or her district. The district judge or judges of the county have authority to review the districting plan as to whether or not it meets the requirement of the law.

In municipalities with wards, the city council accomplishes the redistricting. Here the only criteria is

that the wards be made as equal in population as possible as found in section 7-6-4401 M.C.A. (Appendix A).

The redistricting of the City of Missoula wards has a deviation from the ideal size .9 percent to 3.8 percent with a maximum deviation of 6.9 percent. A maximum deviation of greater than 5 percent was justified based on criteria voiced by the city council. One criterion was that the wards with smaller population were likely to grow during the 1980's. A second was that the wards with larger populations were likely to continue to lose population as they had during the 1970's. Closer balance of population was not possible due to physical constraints, the location residences of the incumbents, and political considerations of the present city council.

Precincts

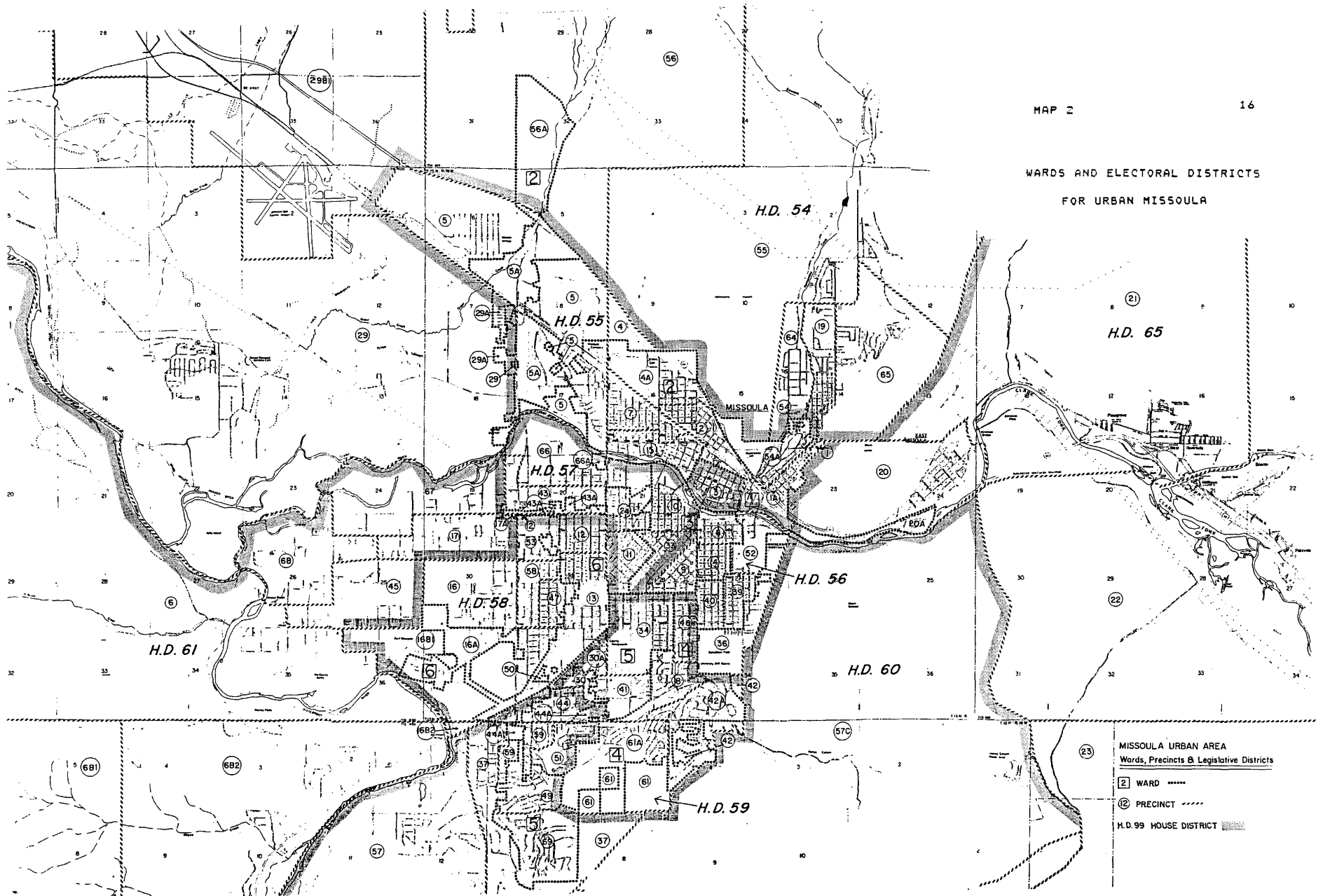
The establishment of precincts is regulated by Title 13, Chapter 3, Part 1, Sections 101 through 105 (Appendix A). The criteria for precincts are to establish a convenient number, equalizing the number of electors in each precinct as nearly as possible.

Precincts cannot be changed within 100 days of any primary election or between a general election and its

primary. The only exception is that the State Apportionment Commission's plan must be reflected in precinct boundaries within 45 days of its filing. The Apportionment Commission usually will finish its work in April or May. This means between April or May and June or July the precinct boundaries must be changed. This is during the school district election period and within 100 days of municipal primary elections in September. Perhaps it is fortunate that reapportionment only comes once every 10 years. The present system causes great stress on the county elections administrators to get the precinct boundaries changed while trying to manage on-going school elections and the filings for municipal elections.

The statutes require consideration by the officials preparing the apportionment plan to take into consideration problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts and other districts. Personal experience working with the Missoula County election administrator during the state and city redistricting in 1982 and 1983 has shown that this requirement is given little attention. In Missoula County House Districts 58, 60 and 61 divide a school district so that an area is created with a population of 3. This area must be identified as a unique part of a precinct. It has become precinct 16B2.

WARDS AND ELECTORAL DISTRICTS
FOR URBAN MISSOULA

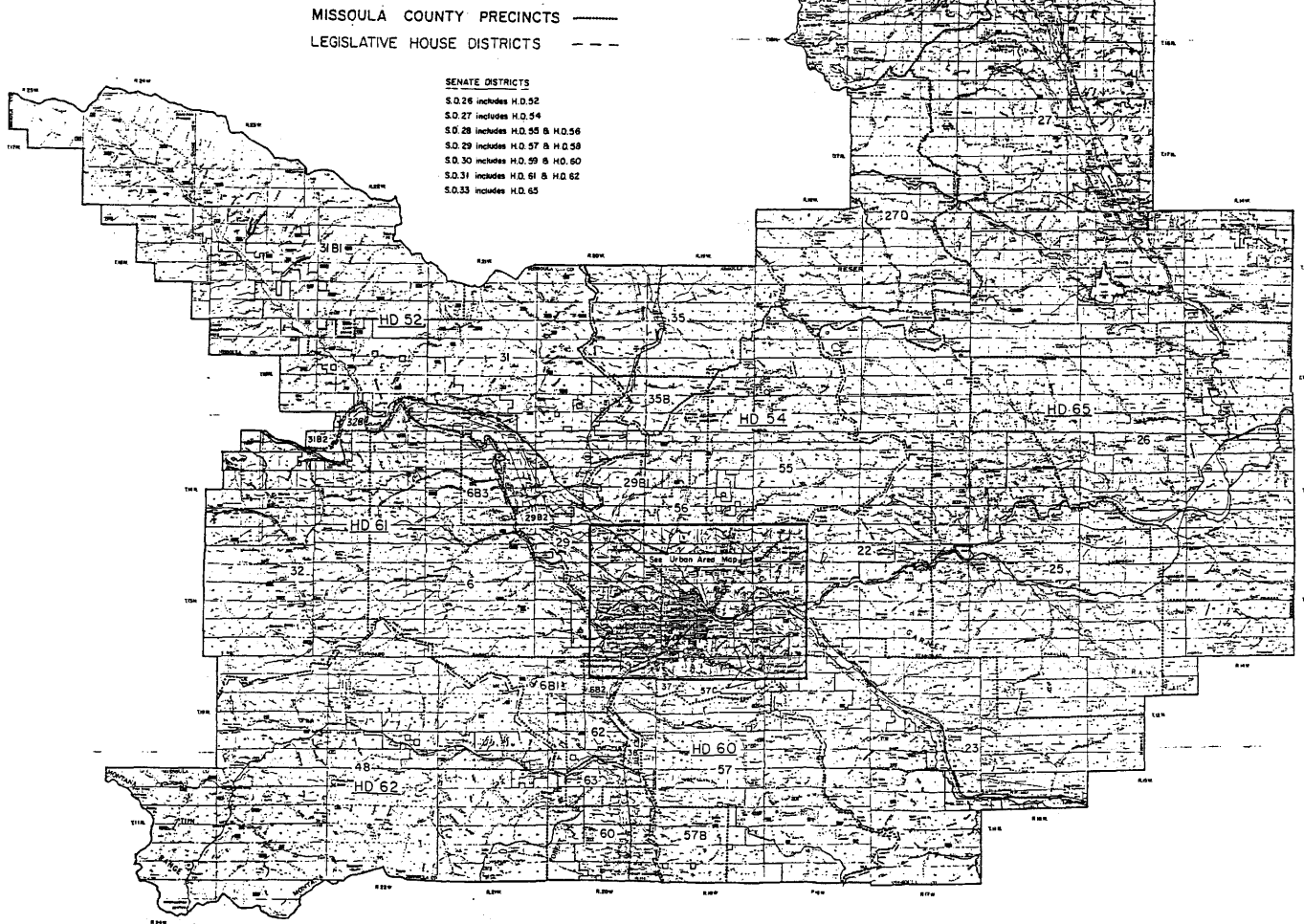


MISSOULA URBAN AREA
Wards, Precincts & Legislative Districts

21 WARD
 12 PRECINCT
 H.D. 99 HOUSE DISTRICT

MAP 3

ELECTORAL DISTRICTS FOR MISSOULA COUNTY



This is an example where a little more cooperation between the State Apportionment Commission and local election administrators could have prevented such situations. Other examples in Missoula caused by House District boundaries dividing existing local boundaries include precincts 20A with 87 persons, 29 with 0 people, 29A with 277 persons, 17A with 17 persons, and 42 with 18 persons. It should be noted that several of these precincts have no registered voters. These precincts as well as other election districts are shown on Map 1 for the urban area of Missoula and on Map 2 for the rest of Missoula County.

The schedule for changing precinct boundaries is found in Table 1. The time available for changing precinct boundaries is between the first Tuesday of November to January 1 or less than 60 days. Another problem with this time is that the election administrator will be busy during the first portion of that time period to verify the results of the November general election. That is a process which can take two to three weeks. Effectively, only the holiday month of December actually is available to implement the changes to precinct boundaries.

Other Electoral Districts

Other districts requiring elections are schools, rural

fire, water and/or sewer, conservation, irrigation, urban transportation, hospital, conservancy, drainage, flood control and water conservation, and cemetery districts. These special districts fall into two major categories when considering redistricting. Some districts are stable with little change in boundaries. Examples include sewer and water districts, conservation districts and hospital districts. The second type of district would be those with dynamic boundaries or boundaries that change between decennial apportionment. Examples of this type include city limits, rural fire districts and urban transportation districts.

Summary

The above discussion suggests two problem areas. The first is the highly fragmented nature of the political structure. There are numerous organizations dealing with redistricting and election management. These include the state legislature, the two political parties, boards of county commissioners, the state apportionment commission, the legislative council, city councils, county superintendents of schools, school district boards and administrators, and county election administrators. The problem is further complicated by the numerous statutes governing these various organizations. These statutes have

little coordination with one another. What little coordination that is mandated is given little credence by the organizations involved as they pursue their individual responsibilities. The result of this lack of coordination has been that representation is not as equal in some districts as in others.

The second factor is the absence of clear and comprehensive criteria with regard to how apportionment should take place. What is meant by "as nearly compact, contiguous and equal in population as possible or practicable" is not clear. Empirical evidence has shown that these criteria are not being met. Districts are spread over several counties, parts of which are inaccessible without having to leave the district. Districts have variances in population of more than 5 percent. Conflicts exist between state and local district boundaries causing an excessive number of low population precincts.

CHAPTER III

PROBLEMS IN APPORTIONMENT AND PRECINCTS

U.S. Bureau of Census

One of the aspects of the problem with redistricting coordination deals with the nature of the census process. The U.S. Bureau of the Census collects information tied to geographic units. Census blocks are the units used within incorporated communities and urban areas. Enumeration districts are used for the remaining rural areas. The Census Bureau requires that all boundaries be observable in order to aid census takers in knowing the limits of their various geographical units. The exceptions to the rule are that census districts must conform to certain political units such as precincts, city limits and county boundaries. In addition the Census Bureau strives to delineate enumeration districts and block groups, the urban equivalent of enumeration districts, with a population of

about 1000. Conflicts arise when a representational election district such as a city ward or a legislative district requires a population that is not divisible by the enumeration district.

One difficulty is encountered with rural school districts. Rural school districts must be separate precincts in order to facilitate school elections for that school district. This is because each school district has different issues on the ballot. Also, some school districts may need special elections if earlier elections fail to pass bond issues or operating millages. The number of voters within such districts often is less than 600. The population of such districts is low, often less than 1000 persons. The boundaries of school districts follow legal or ownership boundaries because school districts use property tax for their operations. Therefore, these must clearly define the taxable property within its jurisdiction.

The conflicts involved here are that census districts generally follow natural features such as roads, rivers and ridgelines, while school boundaries follow section lines and property lines that are not always definable on the ground. Unless rural school districts are wholly within, or coterminous with, a larger representative district, such

as a state legislative district, pieces of rural school districts fall into different precincts. The result is that the voters in such a divided school district must vote at two different polling places. The voter will vote at one place for the school elections early in the year and at another polling place for national, state, and local government elections later in the year. This situation often causes confusion at the polling place, if the voter gets that far, especially in the elections immediately following redistricting.

Dynamic District Boundaries

Similar problems result when a dynamic district, such as one affected by city annexations and special service district extension like rural fire districts, crosses over the more stable districts such as school districts and state legislative districts. Again the voter is often assigned to more than one polling place for different elections. Another situation is that several voter lists are maintained within a single precinct to differentiate what issues a voter may vote upon. An example in the Missoula area is the voter lists for rural fire districts, the urban transportation district and the conservation district must be maintained for some precincts which contain parts of these special districts within a single

precinct.

Precinct Boundaries

The most important factor controlling precinct boundaries is the state legislative districts. After that the more stable districts such as ward boundaries, not coterminous with city limits, county boundaries and school districts become factors in the delineation of precincts. The next factors in determining precinct boundaries are the special districts. Some special district boundaries are not dynamic and can be easily used to determine precinct boundaries. Examples of these fairly stable special districts are sewer and water districts, urban transportation districts and conservation districts. Other special districts pose special problems as they are often changed annually and must be reflected in election precincts. These include city limits and rural fire districts. The main concern is to identify more stable parts of the various boundaries and to use them as boundaries to stabilize some precincts. For the more mobile parts of the boundaries, the best that can be hoped is to anticipate expansions and minimize the number of precincts affected.

Another factor considered in defining precinct

boundaries is population and voting characteristics. This issue has two parts. First is the population size of the precinct. There are optimum numbers of voters that can be handled with the present method of managing elections. The minimum allowable number of election judges can handle a certain number of voters casting ballots. With a minimum of three election judges, this number, in the opinion of Missoula County's election administrator, is 500 voters. Using the national general elections as a standard, an average of about 70 percent of the registered voters actually cast ballots, so the optimum number of registered voters in a precinct is about 700. The average percentage of registered voters to the total population is about 70 percent; therefore, the optimum or ideal precinct population is 1000. The actual percentages in any part of a county must be found to adjust each precinct to the true performance of the voting population and the special characteristics of the population. Examples of deviations from the average are the age of the population as older populations tend to contain more voters who actually vote, type of housing occupancy as the more transient populations of renters have a low voter turnout, and past performance. Past performance would indicate additional variations due to unusual factors such as a large university student population or illegal alien populations both of which must be represented but rarely vote.

Redistricting Goals and Problems

One factor to consider in decisions on precinct and electoral district boundaries is community or neighborhood patterns, cohesiveness and political affiliations. Precincts often reflect community patterns in that precinct boundaries should be coterminous with neighborhood boundaries. Precinct and neighborhood boundaries have become coterminous in many cases because of growth patterns. The older areas of a community form the original precincts and the newer areas become the subsequent ones. Coterminous boundaries become reinforced when residents show interest at redistricting hearings to keep their neighborhood from becoming divided by precincts. Lastly, the polling place is often the focus of the neighborhood for other activities. Often the neighborhood school is also the polling place of the precinct. These neighborhood boundaries represent social patterns which can be reinforced by the political boundaries of precincts. While this goal has little to do with equal representation it does offer the opportunity to define the political power of certain segments of the population more clearly. By grouping the voting power to coincide with existing neighborhood patterns, there is an opportunity for a stronger voice of that neighborhood in the political

process.

However, there is one concern voiced by David R. Mayhew in his essay "Congressional Representation: Theory and Practice in Drawing the Districts" which may run counter to neighborhood patterns if such patterns also reflect a particular political party affiliation. That issue is the one of competition. The author discusses the need to offer a choice of political party candidates to the voter to assure the best political opportunity for the voters. This can only be accomplished by assuring that during the redistricting process and the defining of precincts that no one political party has a clear majority of voting power within a representation district. This may mean that a neighborhood should be divided if that neighborhood is solidly of one political affiliation.

Related to the issue of neighborhood patterns and political affiliation is the issue of cohesiveness or compactness of the district or precinct. The goal here is the convenience of the voter. There are examples in Montana of voters being separated from their neighborhood or community and forced to travel outside of their area to vote in another area. One example is in House District #52 where voters must travel 40 miles to vote in Plains when they live 10 miles from Thompson Falls. Pattee

Canyon, in Missoula County, provides another example in that the residents of the north side of the canyon in Missoula must vote in East Missoula and thus pass nearer polling places to reach their assigned polling place. Sometimes the election administrator will allow these displaced voters to vote at a nearer polling place on a voter list maintained separate from their assigned polling place for the adopted polling place. In addition to the potential for errors, this situation may deter voters from casting their ballot because of the difficulty or inconvenience of doing so.

An issue which enters into the process, even though not a publicly sanctioned factor, is the political status of the incumbent. The incumbent of a district will want to be assured that the political base that got him or her elected will not be eroded by the redistricting process. The incumbent will try to maintain the parts of his or her district that have shown a voting record favorable to his or her political party.

Procedures

This last issue brings the discussion to the part of the situation dealing with the manner in which the redistricting is accomplished. In Montana there are two

methods used. On the state level, redistricting is accomplished by an Apportionment Commission. On the local level redistricting is accomplished by the governing body, in other words, by the ones most affected. The state method, a commission separate from the elected officials, has the benefit of removing the decisions on redistricting from the representatives themselves. This method should allow for a less politically motivated process than is found on the local level. On the local level when the elected officials make the decisions on district boundaries, personal and political motivations are often perceived to effect the decisions.

As shown in Chapter II there are few mandated criteria to guide the process. In addition, the law requires little or no cooperation by the various participants. The present situation depends on the willingness and good faith of the participants, which, unfortunately for the population to be represented, is not always present or carried out consistently.

The timing of the present situation is found in Table 1. This table indicates the various elections, redistricting and other changes that occur over a 10 year period. The table starts with year 0 (1980, 1990, 2000 , etc.) when the census is taken. Each month of the year is

indicated to show the timing of various events.

The events affecting the situation are the U.S. Census, state legislature sessions, Apportionment Commission action, general, municipal, and other elections, precinct changes and school district boundary reviews. The notable information from the table is that there is no coordination between the laws governing apportionment and those governing precinct changes. The actions by the state Apportionment Commission are finished sometime in March allowing only about 60 days for the precincts to be changed for the deadline before the primaries of the municipal elections. However, during this same time period (March to May) school elections are being held and precincts cannot be changed. So the only time for changes to precincts is between November general election and January first of any year. While this would allow for time between the Apportionment Commission action and the establishment of new precinct boundaries, there is nothing in the statutes coordinating such a process. Currently county election administrators are expected to have reorganized the precincts to reflect the Apportionment Commissions changes with 45 days of the action. This time may be during school elections which causes confusion to all involved at the local level.

Therefore, there is a need to coordinate the process at all levels, to establish a procedure which assures an open and fair reapportionment at all levels and to develop criteria which will meet the first two needs and address the concerns of "one person - one vote".

TABLE 1

EXISTING TIMELINES FOR ELECTIONS AND DISTRICT BOUNDARY CHANGE

YEAR	[0]	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	
EVENT	J	F	M	A	M	J	J	A	S	O	N
US CENSUS		*	*	*							
	April 1 is the official date of the census	Following April 1 is planned date for release of census figures	April 1 is usual release date of official census figures								
Legislative Sessions		•—•		•—•		•—•		•—•		•—•	
Apportionment Commission		Appointment of four members during regular legislative session.		Presentation of redistricting plan to legislature with commission approval							
General Elections	f—p—g		•—•—•		•—•—•		•—•—•		•—•—•		
	f=January 1 is the date for opening filing as a candidate for elected office			p=Primary election on the first Tuesday after the first Monday of June				g=General election on the first Tuesday following the first Monday of November			
YEAR	[0]	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	
EVENT	J	F	M	A	M	J	J	A	S	O	N
Municipal Elections		f—p—g		f—p—g		f—p—g		f—p—g		f—p—g	
		f=January 1 is the date for opening filing as a candidate for elected office		p=Primary election on the Tuesday after the second Monday of September				g=General election on the first Tuesday following the first Monday of November			
School Elections (also any (district) (requiring) (annual) (elections))	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	f—gaaaa	
	f=January 1 is the date for opening filing as a candidate for school board of trustees			g=General election on the first Tuesday of April				a=Alternative dates for school elections from the first Tuesday of April until the second Monday of August			
Precincts	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	nnnnnnnn	
	n=Precinct can not be changed 100 days before a primary election nor between a primary and a general election for the electoral district effected										
School District Boundary Review	The County Superintendent of Schools shall, at least once every three years, review the existing elementary school district boundaries in the county, except between the first day of January and the second Monday of August, except for the consolidation of districts - see 20-6-202 MCA										
Special Elections	Special elections may be held at any time after notice is published at least once a week for three successive weeks before the election on radio or television or in a newspaper of general circulation in the jurisdiction where the election will be held										
YEAR	[0]	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	
EVENT	J	F	M	A	M	J	J	A	S	O	N

CHAPTER IV

ALTERNATIVES

The solution to the problems described in previous chapters has two main components. It must have an organizational structure or procedure which will meet the needs of the governmental units involved. It must have criteria which will guide the procedure and protect the interests of the people.

Organizational Structure

The organizational structure or procedure has three basic options. The procedure may be exercised by the elected officials involved; it may be delegated to an administrative organization within government, or an independent commission may be appointed separate from government. Examples of these options would be the present process of defining ward boundaries by a city council for a

procedure controlled by the elected officials. The state Apportionment Commission is an example of an independent group with the responsibility of redistricting.

Administrative examples are rarer. For Montana the County Superintendent of Schools, while elected, does exercise administrative control of the redistricting of school districts. In many other states, an appointed elections administrator or commission has authority over the establishment of precinct boundaries.

Governing Body Redistricting

Redistricting by elected officials has several inherent problems. The foremost is that these same elected officials have a vested interest in the outcome of any redistricting and may have difficulty separating other personal or political interests from the interest of the people who are to be represented on a basis as equal as possible. There can be safeguards enacted to assure an open and fair process. Such criteria is covered in the next section. Other safeguards include adequate notice and public hearings. Finally the courts provide the final safeguard though experience has shown that most court action on reapportionment since the Baker v. Carr case has been brought by an elected official or a candidate to

protect their interest rather than by a public interest group or individual concerned with equal representation. So it is questionable how effective allowing elected officials to control the redistricting process is, especially since this group would also have to enact the criteria and the procedural rules.

Independent Commission

Independent redistricting commissions allow a group of citizens, separate from the legislative functions of government, to conduct the redistricting process. While the commission is usually appointed by the elected officials whose district must be reapportioned, the commission often enjoys a great deal of independence. The common procedure in the creation of such a commission is to have an equal number of members appointed by the two major political parties with those appointed members choosing a final member who often serves as the chairperson of the commission. The Montana Apportionment Commission operates in this fashion. While such a structure may provide for a better base for decisions on representation and redistricting, there is still a need for criteria to guide the process and assure the interests of those not directly involved in the process.

Administrative Redistricting

Administrative redistricting has generally been used when the districts do not involve the reapportionment of elected representatives. Examples would be special service districts, school districts and precincts. With administrative control of redistricting, the use of criteria becomes critical to preventing any claim to the abuse of administrative discretion.

Regardless of the organizational structure used, coordination between the different levels of government and the different processes must be considered. There are several alternatives to consider in maintaining a coordinated structure for redistricting.

Coordination

One alternative would be to have one central group responsible for all levels of redistricting. This would allow the greatest level of coordination and could only be accomplished by an independent commission or administrative agency. The drawbacks would be concerns for local issues and interests being addressed adequately by a remote organization. Locally generated criteria and locally held public hearings could offset this concern.

Another alternative is to mandate through statutes a structure for coordination. Surely a structure could include checks and balances between the various levels of government to assure some level of coordination. There would need to be an arbitrator established to resolve conflicts which could not be settled by the conflicting parties.

Criteria

Criteria to guide any alternative structure is necessary to assure performance of that organization in a manner that will further the goal of equal representation. Criteria should provide clear indication to the organization as to what is expected. The writings of Terry B. O'Rourke in Reapportionment, Law, Politics, Computers indicate that there are several basic theoretical goals to be considered in developing criteria. These goals are equality, compactness, competition and community. In addition to these primary goals there are issues of efficiency and management which must be considered after the goals have been adequately addressed.

Equality of representation is the foremost goal of reapportionment and must be considered over other goals.

However, the courts have allowed substantial deviations from truly equal districts. These deviations appear to be allowable only for state or local districts and not national. The generally accepted maximum deviations are up to 5 percent population difference between the smallest and largest districts. Deviations between 5 percent and 15 percent may be allowed if the deviation is the result of attempts to meet other acceptable goals. Deviations over 15 percent are almost never allowed.

Competition is a goal given little attention in the practices of redistricting. The goal of facilitating party competition often is lost when incumbents control the redistricting process. The incumbent will generally be interested in reinforcing his or her political power rather than fostering competition. Party competition is seen as a good idea because it gives the voters an effective choice among candidates, representatives from competitive districts may be more responsive to the districts interests, competition produces more turnover and prevents "career" politicians, and competition produces fluctuations in party balance reflecting district interests. There are several counter arguments for the competition goal. They are that competition does not guarantee any better representation than non-competitive districts have and that expertise is more important than

representation. Regardless of the arguments for and against party competition, the issue is to not unduly favor one party over another through the redistricting process.

A sense of community within an electoral district is the third goal. The important issue here is the identification of the voters as a "community" and their sense of identification with the elected representative. There can be a conflict between the goal of competition and the goal of community. Often districts which have a homogeneous sense of community also have the same political orientation and offer little party competition. Again the issue is to keep in mind all the districting values and not let one goal unduly control the process.

CHAPTER V

PROPOSAL

The proposal for solving the problems discussed in earlier chapters is presented in two parts. The first part deals with the organizational structure which can meet the needs of the situation. The second part proposes criteria which can guide the process and meet the goals discussed in earlier sections. All these changes will require legislation to change the appropriate state statutes.

Organizational Structures

The proposed organizational structure for local governments would be modeled after the State Apportionment Commission. Each unit of local government which has representatives elected by district would appoint a redistricting commission. The commission members would be appointed in the same manner as the State commission. The

two major parties would each nominate two members to the redistricting commission whose appointment would be confirmed by the local government's governing body within thirty days of the selection of the State Apportionment Commission. These four members would have 20 days to select a fifth member who would act as chairer. If the four members fail to select the fifth member within the time prescribed, a majority of the district court judges of the district within which the unit of local government lies shall select the fifth member.

This organizational structure is chosen for three main reasons. First, the structure is familiar because it is used on the state level and should find better acceptance on the local level than a completely different organization. Second, the structure takes redistricting out of the hands of the elected officials whose districts are being changed and should provide for a more fair and open process. Third, a separate organization working only on redistricting would give focus to any coordination procedure.

A separate issue to be considered is that this proposal, as well as the present system, assumes only two political parties. With the rise of the Libertarian Party, the two party system may be in doubt. If a third party

arises, changes will have to be made.

The changes proposed for precinct boundary creation are the creation of a boundary commission. The boundary commission would be selected by the two major county political parties through their central committees within 30 days of the selection of the State Apportionment Commission. These four commissioners would select the fifth member who would act as chairer. If the four members fail to select the fifth member within 20 days of their appointment, a majority of the district court justices of the district within which the county lies shall select the fifth member.

A precinct boundary commission is proposed for much the same reasons as the local government redistricting commission is proposed. The decisions on precinct boundaries is removed from the County Commissioners who might benefit by certain precinct patterns. Also, the local political parties will become directly involved in the boundary decisions which should make the process more sensitive to community forms and political competition.

The organizational structure for state government apportionment would remain the same because it is working well as a basic structure. The problems at the state level

are more ones of coordination with other units of government. The change proposed at the state level deals with coordination with the proposed local government redistricting commissions and the precinct boundary commissions.

The coordination of the various commissions, as well as the criteria, is what will make this proposal work. What is proposed is that redistricting would be done from the bottom up rather than the top down as it is done now. First, the precinct boundary commissions generate the new precinct boundaries to meet local criteria and demographics. Then the local government redistricting commissions and the state apportionment commission would aggregate the new precincts in to the appropriate electoral districts. If the redistricting and apportionment commissions desire to change the precinct boundaries to promote their criteria, the affected precinct boundary commission would have to agree to the change. This degree of cooperation should provide for the best coordinated approach at all levels. The boundary commissions would not have no say on which precincts would go into which electoral districts but would have a part of the decision as to which voters and residents would go into which precinct.

There is another component in the organizational structure - school district boundary review (20-6-202 MCA). This proposal would change the review from at least once every three years to at least once every five years. The five year period would allow, first, reconsideration of school district boundaries prior to a federal census to predict expected growth trends and, second, response to the census information to reflect actual growth trends. This change in review periods will allow better integration of school district precincts into the apportionment process. With consideration of the next element in the structure, school districts and census districts would become coterminous. While school election districts are not as important as representative districts in assuring equal representation, they are a component of the election process and should be considered in any proposal to improve the apportionment and election process.

The last element of the structure is the coordination between local election and precinct interests and the U.S. Bureau of Census. The precinct boundary commission should work with the state and local government agencies in the development of census boundaries for preparation of a forthcoming census. Here the commission would have to anticipate changes in precinct boundaries so the new census information would be in a form to reflect these changes.

Examples of this last concern would deal with school districts, special service districts and municipal boundaries.

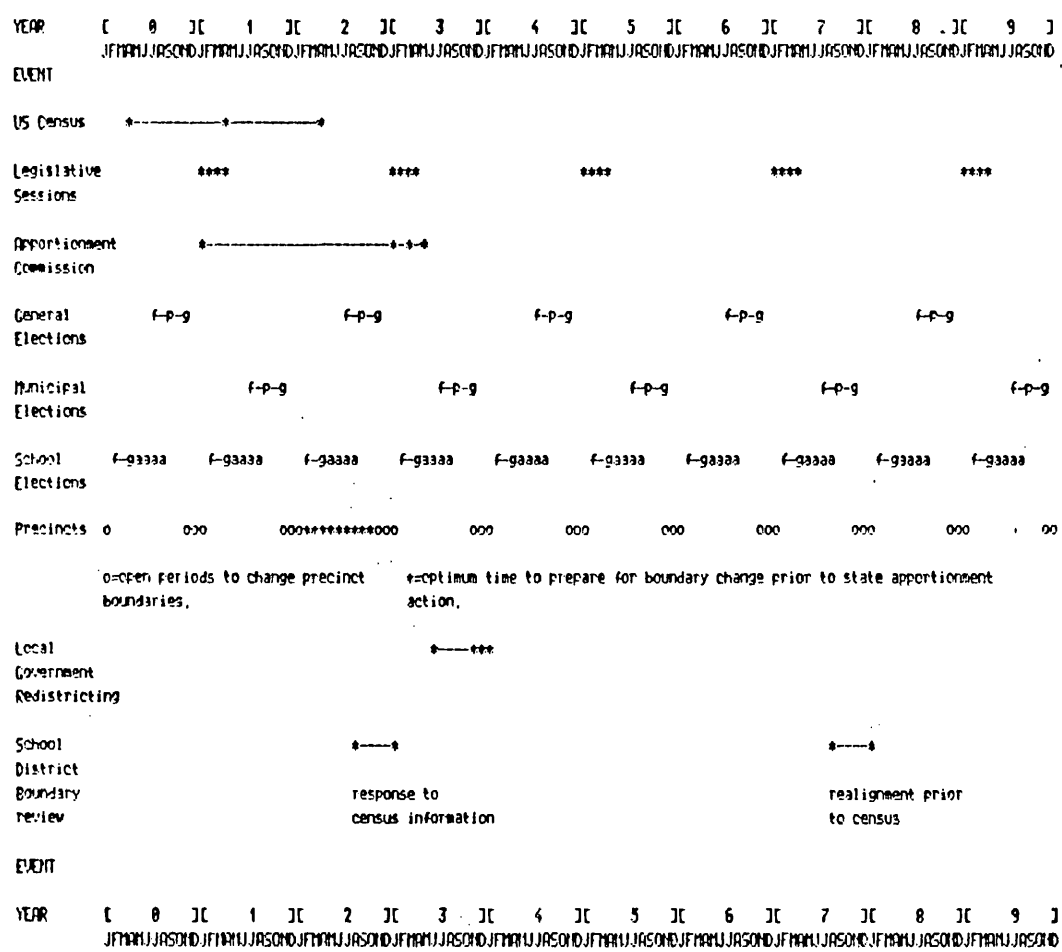
Table 2 shows a proposed timeline for a more coordinated approach to redistricting. In this table the timelines for the U.S. Census, legislative sessions, and apportionment commission are not changed from the present system as shown in Table 1. The changes proposed in this chapter are reflected in the timelines for the school district boundary review, local government redistricting, and precincts. An additional change is proposed in the date for the opening of filing elected office in school, municipal and general elections. Also, the primary election date for national and state general election is changed to the first Tuesday of September as now used in municipal elections. This last change is possible if Montana's primary is not used in the presidential nomination process. The purpose of these changes in dates is to expand the time period where changes can be made from less than 60 days to almost 90 days.

Criteria

To guide these structures, criteria must be developed to insure consistency and to guarantee that basic

TABLE 2

PROPOSED TIMELINE FOR ELECTIONS AND REDISTRICTING



constitutional issues are properly addressed. Proposed is a two part system. The first part is the development of overall state wide criteria to guide the commissions. The proposed criteria are:

(1) The maximum deviation between the largest and smallest electoral district shall not exceed 5 percent unless evidence is presented that meeting other established criteria is more in the public interest than the established range of population maximum deviation and that no other alternative which will meet the other established criteria and the 5 percent maximum deviation limit can be found.

(2) All districts must be contiguous and the polling places readily accessible. No voter shall have to travel through another electoral district to reach the designated polling place.

(3) The records of the political party preference of the voters of each precinct shall be made available to the redistricting and apportionment commissions. The information shall come from the most recent party primary election. Efforts shall be made to promote political competition within each electoral district.

(4) Precincts shall be sized so that, under ordinary circumstances, no voter shall have more than thirty minutes waiting time, except at the time when polls close, and all voters shall be finished within one hour of closing of polls. (16)

(5) Communities of interest will be considered. Communities of interest can be defined by trade areas, regional and other governmental organizations, and communication and transportation networks. (17)

(6) Agencies involved in defining census unit boundaries will attempt to make such boundaries coterminous with election district boundaries. Special consideration should be given to school district boundaries and precinct boundaries.

The second part is a mechanism for additional

criteria. Since there is about a year lapse between the appointment of these commissions and the release of official census data, this time should be used by the commissions to develop written criteria to guide their decisions on district and precinct boundaries. The process proposed would require the commissions to develop criteria upon which they would make their decisions after public hearings on the proposed additional criteria. This additional criterion will allow public concerns to be addressed by the commissions and will require the commissions to base their decisions on established criteria. While the commissions should be allowed to adopt criteria at any time, after following the proposed procedure, such criteria must be in place before it can be used to base a decision. Areas to be covered by this additional criteria could include school district and special service district boundaries, natural physiography, ethnic and minority interests, travel patterns, neighborhood cohesiveness, sense of community, and location of polling places.

Conclusion

This paper has explored the issues of redistricting. Two major problems have been identified. One problem is the lack of a coordinated structure to accomplish

redistricting. There is a lack of coordination between the various levels of government and between the agencies involved in redistricting. There is no clear definition of authority. The second problem is the lack of established criteria to guide the decision making. There is little or no criteria established in law or by policy which will guide the organizations involved in redistricting and which will guarantee the idea of one person-one vote.

Solutions are proposed in this paper to address the problems. The proposed organizational structure will promote coordination between the different levels of government. The appointment of commissions will remove the apportionment decisions from the elected representatives and make the process more accessible to the public. The criteria will guide the process and insure the public that decisions will be made according to constitutionally valid principles and publicly adopted criteria.

In order to implement these solutions, state law will have to be changed. If these solutions are to have any effect on the 1990 reapportionment, the changes must be made during the 1987 legislative session. The changes in the structure of redistricting organizations address the sections in state law that deal with local government redistricting (7-4-2101 to 2104, 7-5-4401, and 13-3-101 to

105.) The addition of criteria would be addressed either by the state legislature in the sections previously mentioned or by the new redistricting commissions. The better approach would be to have the redistricting commissions develop the criteria through public hearings with a legislative oversight committee then proposing additional changes to state law to incorporate the criteria. The commissions would be the better vehicle to establish criteria because they would have a focus on the problems of redistricting, especially on localized problems, and would be more removed from the political pressures faced by the legislature. The establishment of criteria should be accomplished before the 1993 legislative session and the 1993 state redistricting efforts.

There are several items left undone by this paper. One is the structuring of coordination between the U.S. Bureau of Census and the state and local agencies which will draw the various census unit boundaries for the 1990 census. Another item is the development of a means to allow participation by a third political party in the redistricting process. The last item is the establishment of a process which will evaluate the proposed changes as they are enacted and make additional changes as they are needed to provide for improved election management and more equal representation of the population.

APPENDIX A

MONTANA CODES

Reapportionment Commission

5-1-101. Commission to redistrict and reapportion. In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

5-1-102. Composition of commission. The majority and minority leaders of each house shall each designate one commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within 20 days of their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

5-1-103. Vacancy on commission. (1) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(2) In the event the appointing authority at the time a vacancy occurs is of the opposite political party than that of the appointing authority that made the appointment that is vacant, the majority or minority leader of the same political party as the appointing authority the made the original appointment of the commissioner whose position is vacated shall designate the successor.

5-1-105. Restriction on commissioners seeking election to legislature. A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which he participated becomes effective.

5-1-106. Legislative council to provide technical and clerical services. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

5-1-107. Assistance of state agencies. Upon request state agencies shall cooperate with the commission and furnish technical assistance and consulting personnel.

5-1-108. Public hearing on plan. Before the commission submits its plan to the legislature, it shall hold at least one public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

5-1-109. Submission of plan to legislature. The commission shall submit its plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

5-1-110. Recommendations of legislature. Within 30 days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendation.

5-1-111. Final plan - dissolution of commission. Within 30 days after the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

County Commissioners

7-4-2101 Division of county into commissioner districts. (1) In every county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts. However, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. No change in the boundaries of any commissioner district shall be made within 6 months next preceding a general election. (2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section. (3) Section 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of

government authorized by law.

7-4-2103 Filing of certificate designating districts. When such division of commissioner districts has been made, there shall be filed in the office of county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

7-4-2104 Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county.

(2) No one shall be elected as a member of said board who has not resided in said district for at least 2 years next preceding the time when he shall become a candidate for said office.

Municipal Elections

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

b) Cities of the second class must be divided into not less than three or more than six wards.

c) Cities of the third class must be divided into not less than two or more than four wards.

d) Towns must be divided into not less than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number of boundaries or wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors.

Election Precincts

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) the governing body of each county shall establish a

convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days of any primary or between a general election and the primary for that election. When the changes required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

2) All changes must be certified to the election administrator 3 days or less after the change is made.

3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries or wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the ward, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards, or districts and the territory included in each.

13-3-104. Precincts, wards, and election districts. (1) a ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

2) Precincts may include two or more adjoining wards, or election districts, together with contiguous territory lying outside the municipality of district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if as all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precincts polling places. Notice may also be given by whatever means available.

3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

APPENDIX B

FOOTNOTES

1. Baker v. Carr, 369 U.S. 186 (1962).
2. Constitution of the State of Montana, 1972, Article V, Section 14, Districting and apportionment, Subsection (1).
3. Gregory, Gordon, Missoulian, "For some, voting today means an 80-mile round trip." November 6, 1984.
4. Richard Carell, Associated Press, Missoulian, "Supreme Court questions redistricting variance", June 23, 1983.
5. Montana Codes Annotated, Title 7, Chapter 3, Sections 218, 227, 313, 317, 412, 417, 512, 516, and 704.
6. Interview with Wendy Cromwell, Missoula County Election Administrator, November, 1982.
7. U.S. Bureau of Census, Department of Commerce, Block Statistics - Missoula County, 1980
8. Christopher Alexander, Sara Ishikawa, Murray Silverstein, Max Jacobson, Ingrid Fiksdahl-King, and Shlomo Angel, A Pattern Language (New York: Oxford University Press, 1977)
9. Nelson W. Polsby, ed. Reapportionment in the 1970's (Berkeley: University of California Press, 1971) page 255.
10. Gordon Gregory, Missoulian, "For some, Voting today means an 80-mile round trip", November 6, 1984.
11. Montana Codes Annotated, Title 5, Chapter 1, Sections 101-111.
12. Montana Codes Annotated, Title 13, Chapter 3, Section 102.

13. O'Rourke, Terry B., Reapportionment, Law, Politics, Computers, (Washington, D.C.: American Enterprise for Public Policy Research, 1972) page 19.

14. Karcher v. Daggett, 462 U.S. ___ L.Ed. 2nd ___. 103 S. Ct. ___. 51 U.S.L.W. 4853.

15. Brown v. Thomson, 462 U.S. ___ L.Ed. 2nd ___. 103 S. Ct. ___. 51 U.S.L.W. 4883

16. Idaho State Codes, Title xx, Chapter xx, Section xxx.

17. Report and Recommendations of the Montana Districting and Apportionment Commission, Helena, MT: Montana Legislative Council, December 1982) page 12.

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