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Sent by Email only

Senator Fred Thomas (SD 44)
1004 Burnt Fork Rd.
Stevensville, MT 59870

Dear Senator Thomas:

I have been retained by the Democratic Legislative Caucus to respond to your call for a joint rules committee meeting on September 17, 2020.

Your attempt to convene a joint rules committee meeting at this point in time is clearly prohibited by §5-2-205 MCA which provides that standing committees “may not meet between regular legislative sessions.”

I understand that you may believe that the exception provided in §5-2-202 MCA authorizes your meeting tomorrow. However, §5-2-202, by its own terms applies to the pre-session activity occurring prior to the new legislative session beginning in January. That section appears directly after §5-2-201 MCA authorizing certain legislative activities after the new legislature has been elected to prepare for the new legislative session. As you are aware, the Montana legislature has followed the letter of that law since its enactment in 1974. There is little question that a court would limit the exception upon which you rely to activity occurring between the November election and the beginning of the new legislature.

I do not question the authority of the legislature granted under Article III, Section 2 to change the seat of government from Helena to another location in the event of an emergency created by disaster or enemy attack. But that provision is limited to changing the place of government during an emergency. Moreover, there is no question that the legislature can deal with all manner of issues created by an emergency. Indeed, prior legislatures have been convened during times of emergency to enact laws regarding emergencies and continuity of government. *See, e.g., St. ex re. Sparling v. Hitsman*, 99 Mont. 521 (1935). But that power can only be exercised by the legislature acting in a regular or special session.

It is a fundamental premise of legislative constitutional law, statutory law, rules, and parliamentary law, that the Legislature must have quorum of each house to convene in regular or special session in order to take an official action to pass a bill or resolution. *See* Mont. Const. art. V, § 11(1) (“No bill shall become law except by a vote of the majority of all members present and voting.”); *id.* § 2 (“A majority of each house constitutes a quorum.”); § 5-11-205(1), MCA (the legislative services division “shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication”); § 5-11-205(4), MCA (“Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as heading.”). Both bills and resolutions, adopted only in a session of the Legislature, constitute the official Laws of Montana or Session Law of enactments of the Legislature. § 5-11-205, MCA.).

The power of the legislature may not be exercised in the absence of a special or regular session properly convened. And, it certainly cannot be exercised by a standing committee acting during an interim. There is a process in place through the Legislative Council to discuss rules changes and forward recommendations in order to prepare for a legislative session. This process has been ongoing over the interim. Additionally, if there is a need to take official legislative action during the interim, the process for calling and convening a special session of the legislature is available and appropriate.

Should you hold an illegitimate meeting of the Joint Rules Committee tomorrow, any action taken will have no legal force or effect and any such effort will be challenged in court.

Sincerely,

/s/ Peter Michael Meloy
PETER MICHAEL MELOY

cc: Jaret Cole and Susan Fox
Montana Legislative Services Division
State Capitol
PO Box 201706
Helena, MT 59620-1706