

# SECRETARY OF STATE

## STATE OF MONTANA



Mike Cooney  
Secretary of State

Montana State Capitol  
Helena, Montana 59620

Robert LaFountain  
Attorney at Law  
321 S. 24th S.W.  
Billings, Montana 59102

Dear Mr. LaFountain:

Following our telephone discussion February 9, 1989, I conducted further research to determine what affect if any the City of Lodge Grass's failure to file a "plan of form of government" would have. Specifically would the failure to file a "plan" adversely affect the town's incorporation status. Following my review I have concluded that the failure to file a plan does not adversely affect the towns status.

The statutes which required incorporated cities and towns to file their form of government plans with the Secretary of State's office were enacted in 1975 to implement the 1972 Montana Constitution. Chapter No. 513 of the Laws of Montana established a time frame for completion of the form of government review study and thereafter the filing of the approved plan. Chapter No. 675 of the Laws of Montana 1979 impliedly amended the 1975 statutes. These two acts are found in 7-3-101 et seq.

Most of the cities and towns complied with these requirements. But apparently Lodge Grass failed to file its plan with the Secretary of State's office. However the failure to file a plan apparently would have no affect its incorporation. Nowhere in the statutes does it say that a city is disincorporated by failing to comply with the government study laws. The only enforcement authority provided in the statutes was in section 18 of Chapter No 513. That section stated:

"(1) Ten (10) or more qualified electors or the attorney general may petition the district court to enforce the provision of this chapter." This language was dropped in the codification of the 1979 act. The remaining language is found in 7-3-154 MCA.

In reviewing the government plan statutes it is clear that a town can not be disincorporated without holding an election or being found inactive by the county commissioners. See 7-2-4901 et seq and 7-3-145 MCA. The failure of Lodge Grass to file its local government study plan would not result in its disincorporation unless the county commissions found that as part of the evidence to prove the city was inactive. But if the town continued to function then the failure to file the plan would not in itself prove that the town was inactive.

It should be noted that our files indicated the city of Plains Montana filed its "plan" in 1983 apparently after the Attorney Generals office notified them that they were in violation of the 7-3-101 et seq. They had conducted their study, but failed to file their plan with the Secretary of State's office.

Finally if the City of Lodge Grass had disincorporated then a certificate of disincorporation should have been filed with the Secretary of State's office. (7-2-4906 MCA) We have no such document on file.

Our office received on January 26, 1989 a copy of a resolutions appaently aproved by the city counsul of Lodge Grass which indicates it desired to continue its existing form of government. The department of Commerce has a study commission report on file and send a copy of it to our office. Upon regest of the City of Lodge we will offically file those documents. However, I am not advising you that these documents comply with the statutes.

If you have any questions, feel free to contact me.

Very truly yours,

Garth Jacobson