



By Ronda K. Munger
Program Coordinator
Wyoming Supreme Court

JUDICIAL RETENTION ELECTIONS

In this day and age of mass media and the Internet, the process of popular elections for our legislators is well publicized and generally understood. Furthermore, the aftermath of the 2000 presidential election gave most citizens a general understanding of the Electoral College and the process we use to elect our president. The average voter, however, probably knows little about the process we use to “elect” the public officials that operate our third branch of government, the judiciary.

During the last half of the twentieth century, state and federal court systems in the United States experienced significant change. Those who argued for judicial reform believed that the trial courts were, among other things, "too political," "too immersed in localism," and "too dominated by lawyers."¹ The national reform movement proposed the removal of the trial courts from the local government structure and politics into a uniform statewide judicial branch that was funded by the state and operated under the administrative direction of the court of last resort. It was at this time that most states returned to filling judicial vacancies by a process of appointment.

In 1940, Missouri adopted a "merit selection" plan, which combined judicial appointments with a merit selection process and retention election.² The Missouri Plan proposed a non-partisan nominating commission of lawyers and non-lawyers to identify and evaluate candidates for judicial positions. Next, a list of qualified applicants is submitted by the commission to an appointing authority, usually the governor, who chooses a candidate to appoint to the bench. Then, periodically, judges are required to appear on a ballot for a "retention" vote.

Wyoming initially joined the overall court reform movement in 1971 when Wyoming's Legislature adopted the "Missouri Plan" for the selection and retention of Wyoming's judges.³ Wyoming voters subsequently approved the necessary amendments to the Wyoming Constitution at the 1972 general election. Article 5, Section 4 of the Wyoming Constitution defines the operation and make up of the Judicial Nominating Commission, as well as the retention election process that Wyoming judges must undergo after appointment. The commission consists of seven members. The chief justice (or another justice appointed by the chief justice) serves as chairperson. Three other members, elected by the Wyoming State Bar, must be attorneys active in the practice of law in the state. The three final members are non-lawyers appointed by the governor. Commission members serve four-year terms and are not eligible for a second term. The commission is charged with submitting a list of three nominees to the governor not later than sixty days after the announcement of a judicial vacancy.

Each judge or justice selected under the provisions of Article 5, Section 4 of the Wyoming Constitution serves for a period of one year after his/her appointment and until

the first Monday in January following the next general election. If a majority of those voting on the question of retention vote affirmatively, the justice or judge shall be elected to serve the succeeding term as prescribed by law: the terms of supreme court justices are for eight years and they are required to stand for retention on the ballot of the entire state; district court judges' terms are for six years and they are required to appear on the ballots in their respective judicial districts; and circuit court judges' terms are for four years and they are required to appear on the ballots in their respective judicial districts. The terms for full-time magistrates, as defined by Wyo. Stat. Ann. § 5-9-207, are for four years and they are required to appear on the ballots of the county they serve.

The debate over the method of selecting judges in our society began long before Missouri instituted the merit selection system. Alexander Hamilton and Thomas Jefferson debated this issue even before the founding of our nation. Finding the delicate balance between the competing values of judicial independence and judicial accountability is a difficult one; however, the Missouri Plan, which was implemented over twenty-five years ago, remains largely unchanged and continues to serve Wyoming to this day.

For more information regarding the judicial selection and retention process in Wyoming, please see Michael J. Horan and Kenyon N. Griffin, *Judicial Merit Retention in Wyoming: An Analysis and Some Suggestions for Reform*, 15 Land & Water L. Rev. 2 (1980) and Michael J. Horan and Kenyon N. Griffin, *Ousting The Judge: Campaign Politics in the 1984 Wyoming Judicial Retention Elections*, 24 Land & Water L. Rev. 2 (1989).

Endnotes

- ¹ Tobin, Robert W. Creating the Judicial Branch: The Unfinished Reform. Virginia: National Center For State Courts, 1999, p. 22.
- ² Honorable Jay A. Daugherty. The Missouri Non-Partisan Court Plan: A Dinosaur on the Edge of Extinction or a Survivor in a Changing Socio-Legal Environment?. 62 MO. L. REV. 315, 318 (1997).
- ³ Session laws of Wyoming, 1971. Cheyenne: Secretary of State's Office, 1971, pp. 719-723. The Proposed Constitutional Amendment was then submitted to the voters for approval at Wyoming's next general election.



A wide variety of energy sources have made Black Hills Corporation a stable and diversified provider of low-cost reliable energy and communications solutions to customers throughout the U.S. We currently have an opportunity in our Rapid City, South Dakota Corporate Office.

Corporate Attorney Rapid City, SD

Will provide legal advice and support related to contract administration/performance, joint ventures, and other strategic partnerships, and assist with outside counsel. Other duties include drafting/reviewing legal contracts and documents; developing/reviewing corporate governance and compliance procedures; and representing the company in courts and regulatory agencies, as well as civic, professional, and industry-related activities.

Must be licensed to practice law in the state of South Dakota and possess a juris doctor degree from an ABA accredited school. Requires 2+ years' legal experience with a preference for commercial experience.

We offer an attractive competitive benefits package and a supportive professional work environment. To apply, submit your resume, cover letter and salary history (referencing Job Code) to:

Human Resources, Black Hills Corporation, Job Code: 804/WL, PO Box 1400, Rapid City, SD 57709

Or email with job code in subject line to: jobs@blackhillscorp.com

www.blackhillscorp.com

Equal Opportunity/Affirmative Action Employer