

Irrigation District—Residence of Director.

A person elected or appointed director of an irrigation district must be the owner of land within the division from which he is elected or appointed, but is not required to actually reside therein, providing he is a resident of the county in which some portion of the division is situated.

E. F. Bunker, Esq.,
County Attorney,
Bozeman, Montana.

My dear Mr. Bunker:

You have requested an opinion from this office as to whether a director for an irrigation district must reside within the particular sub-division of the district from which he is elected.

Section 7 of Chapter 153 of the Session Laws of 1921 provides:

"No person shall be qualified to hold the position of director unless he be an owner of land within the district, and shall be a resident of the county in which the division of the district, or some portion thereof, for which such director is elected, is situated."

The section further provides that:

"The directors appointed as aforesaid shall hold their respective offices until the third Saturday in April following

their appointment and until their respective successors are elected and qualified as and in the manner hereinafter provided."

Section 38 of this chapter provides for the regular election of directors in each district and the term of office, as follows:

"The term of office of directors shall commence on the third Saturday in April following the election. At the first regular election following the creation of a district there shall be elected one director from the first division who shall hold his office for a term of one year; one director from the second division who shall hold his office for a term of two years; one director from the third division, who shall hold his office for a term of three years; * * * each director so elected must be a qualified elector and a resident of the same divisions as the director whom he is to succeed in office."

Section 39 provides as follows:

"In case of a vacancy in the board of directors from any cause, such vacancy shall be filled for the remainder of the term by appointment by the judge of the district court of the county in which the division or major portion thereof is situated. The appointee shall be an owner of land situated in the same division of the district as his immediate predecessor of such board, and shall hold office until his successor is elected and qualified."

The provisions of Section 38, requiring the director to be a resident of the same division as the director whom he is to succeed in office, would seem to be intended to prevent all directors from being elected from the same division of the district rather than a requirement that each should be a resident of the particular division. Under Section 7, which is the only section treating directly of the qualifications of directors, a director is merely required to be an owner of land within the district, nothing being said as to his being required to reside therein, but only that he be a resident of the county in which the division from which he is elected is situated, while under Section 39 an appointee to fill a vacancy is required to be an owner of land situated in the same division as his immediate predecessor.

I am, therefore, of the opinion that, construing these sections together, the person elected or appointed must be the owner of land within the division from which he is elected or appointed, but that he is not required to actually reside therein, providing he is a resident of the county in which some portion of the division is situated.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.