

Dear Mr. Young:

You have requested an opinion of this office relative to the length of residence required of candidates for county commissioner and particularly as to the meaning of that portion of Section 4 of Article XVI of the Constitution of the State of Montana, pertaining to the length of residence of such candidate in the district which he wishes to represent and the further question as to whether the clerk and recorder of the county may reject nominating petitions because of lack of qualifications, or may keep the names of unqualified persons off the ballot.

Section 4 of Article XVI of the Constitution of the state of Montana in speaking of the county commissioners, provides in part as follows:

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

The Supreme Court of the state of Montana in the case of *Snyder v. Boulware*, 109 Mont. 427, 96 Pac. (2nd) 913, touches upon the required residence of such candidates, and although the facts in that case are considerably different than the case you present and the court definitely states at page 433, Volume 109 Montana Reports, as follows:

"The question whether he became a candidate the moment he filed for the nomination or the moment that he received the nomination is not involved here."

Therefore, that case does not settle the question at hand any further than that the court would under any circumstance hold he had to have the residence of two years at the time of receiving the nomination, this year being July 18, 1944.

The Supreme Court of Pennsylvania in the case of *Leonard v. Commonwealth*, 4 Atlantic 220, had a question of election fraud before it and at page 224, Volume 4 Atlantic Reports, the court recites as follows:

"The word 'candidate' in the constitution is to be understood in its ordinary popular meaning, as the people understand it whose votes at

Opinion No. 220.

**Residence—Candidate for County
Commissioner—County Commissioner
—Counties**

Held: A candidate for county commissioner must have resided within the county commissioner district which he seeks to represent for at least two years next preceding the time when he shall file his nominating petition or his certificate of nomination (Section 615, Revised Codes of Montana, 1935). The clerk and recorder has no authority to pass on the qualifications or eligibility of any candidate for office other than as to the sufficiency of the nominating petition or certificate of nomination.

June 12, 1944.

Mr. Denzil R. Young
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the polls gave that instrument the force and effect of organic law. Webster defines the word to mean 'one who seeks or aspires to some office or privilege, or who offers himself for the same.' This is the popular meaning of the word 'candidate.' It is doubtless the meaning which the members of the constitutional convention attached to it, and the sense in which the people regarded it when they came to vote. We therefore say, in everyday life, that a man is a candidate for an office when he is seeking such office. It is begging the question to say that he is only a candidate after nomination . . ."

The quoted portion of the constitution is specific in its wording that the person must have resided for at least two years next preceding the time he shall become a candidate. The requirement is not a requirement of holding the office, but a requirement of becoming a candidate. The popular conception of the word candidate is a person seeking office. Under our election system a person definitely becomes a seeker of the office at the time such person files his nominating petition or otherwise files such papers as the law requires for having the name placed on the ballot at a primary or general election.

Your second question involves the duties and powers of a ministerial officer, the clerk and recorder. The law specifically provides what the said officer, clerk and recorder, shall do in the event nominating petitions or other lawful certificate are placed in his hands. The clerk and recorder has authority to pass upon the sufficiency of the nominating petition or certificate of nomination, but has no authority to pass upon factual questions. (See in this respect, *State ex rel. McNalty v. Glosner*, 145 N. W. 547; *Miller v. Davenport*, 70 Pac. 610; *People ex rel. Eaton v. District Court of Araphoe County, et al.*, 31 Pac. 339; and *Salter et al. v. Board of Election of City of New York*, 134 N. Y. S. 639.)

It is therefore my opinion a candidate for county commissioners must have resided within his particular commissioner's district for a period of at least two years next preceding the time when he shall file his nominating petition or otherwise places before the clerk and recorder his certificate of nomination under Sections 612 or 615, Revised

Codes of Montana, 1935, but that the clerk and recorder has no jurisdiction to pass upon the qualifications of any candidate nor question the candidate's eligibility for the office other than as to the sufficiency of the nominating petition or certificate.

Sincerely yours,
R. V. BOTTOMLY
Attorney General