VOLUME NO. 37 OPINION NO. 5

ELECTIONS - Qualifications of candidates for public office; CONSTITUTIONAL LAW - Restrictions on candidates for public office; REVISED CODES OF MONTANA, 1947 - Sections 11-714, 11-725, 74A-206.

HELD: Candidates, otherwise qualified, are eligible to seek public office irrespective of whether they own real property.

15 March 1977

James E. Torske, Esq.
Hardin City Attorney
Hardin, Montana 59034

Mrs. Ruth Adams
Virginia City Town Clerk
Virginia City, Montana 59755

Dear Mr. Torske and Mrs. Adams:

You have requested my opinion regarding the eligibility of certain candidates for local office. Specifically you have requested whether individuals who are not landowners are qualified to run for the position of alderman in the city of Hardin and for a member of the City Commission of Virginia City.

Article IV, section 4, of the Montana Constitution provides:

> Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

The Montana Constitution, Article IV, section 2, regarding qualified electors, provides that:

> Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Taken together the two provisions under Article IV of the Montana Constitution merely require that an individual be a citizen of the United States, eighteen years of age or older, and satisfy certain residency requirements, in order to be a qualified candidate for public office. However the Constitution does provide that the Legislature may enact additional qualifications.

The city of Hardin has retained the mayor-alderman form of government. Under section 11-714 as well as section 11-725, R.C.M. 1947, the Legislature has proscribed additional candidate qualifications. Both statutes provide that only landowners are qualified to run for the position of alderman.

Virginia City has adopted the commission-chairman form of government pursuant to section 74A-206, R.C.M. 1947. That statute has no additional provisions regarding the qualifications of candidates for commission offices.

In 1973, the United District Court for the District of Montana, issued a memorandum opinion in the case of William Warden v. The City of Bozeman, et al., Cause No. 2341. That decision declared that the provisions of a statute identical in effect to the provisions of sections 11-714 and 11-725, requiring a candidate for the office of city commissioner in Bozeman to be an owner of real estate, were unconstitutional. The court found that section 11-3215, R.C.M. 1947, were unconstitutional on its face in that it denied Mr.

Warden his right to equal protection of the laws under the 14th Amendment of the United States Constitution.

The District Court held that the freeholder requirement of that statute had no rational bearing on a person's qualifications to responsibly serve as city commissioner; the statute in question did not further the legitimate interests of the state in maintaining the integrity of the election process, and that it in fact was invidious discrimination on the basis of wealth.

Recently in a footnote to Buckley v. Valeo, 424 U.S. 1 (1976), at page 49, the Supreme Court discussed its prior decisions and said:

> Cases invalidating governmentally imposed wealth restrictions on the right to vote or file as a candidate for public office rest on the conclusion that wealth is not germane to one's ability to participate intelligently in the electoral process and is therefore an insufficient basis on which to restrict a citizen's fundamental right to vote.

The principle case relied upon in the Warden opinion was Turner v. Fouche, 396 U.S. 346 (1969). That case involved the eligibility of individuals to be selected as members of a local school board. The Georgia program which was found to be unconstitutional required that individuals selected for office be freeholders. Discussing those qualifications the court held:

> The appellants and members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications...it seems impossible to discern any interest the qualification can serve.

The numerous cases that are in accord with Turner, supra, generally rely on two important factors. Often the right of a party or an individual to a place on the ballot is intertwined with the rights of voters; laws that effect candidates always have at least some theoretical, correlative effect on voters. The court has continuously struck down statutes that purport to limit the franchise of voters in such a manner. See Cipriano v. City of Houma, 295 U.S. 701 (1969); Bullock v. Carter, 405 U.S. 134 (1972); and Lubin v. Parish, 415 U.S. 715 (1974). Of course this is not to say

that every voter is entitled to have every candidate to his liking on the ballot. But the process of qualifying those candidates may not be measured solely in terms of wealth.

In addition, the court has held that any preclusion, such as the freeholder requirement in the instant case, which is absolute in nature must be subjected to strict scrutiny. In Lubin v. Parish, supra, the court struck down a statute that required all candidates for office of county supervisor in California to pay a filing fee. The court held that absent reasonable alternative means of ballot access, denial of the right to file as a candidate solely because of inability to pay the filing fee was not reasonably necessary to the accomplishment of the state's legitimate interest in maintaining the integrity of elections. The court held that such a procedure may:

> [O]perate to exclude some potentially serious candidates from the ballot without providing them with alternative means of coming before the voters.

See also Williams v. Rhodes, 393 U.S. 23 (1968); and Phoenix v. Kolodzieiski, 399 U.S. 204 (1970).

In light of the above, it is may opinion that any statute which precludes an individual from becoming a candidate for public office because that individual does not own real property would not sustain judicial scrutiny. It is clear that the United States District Court for the District of Montana has taken the position that there is no legitimate state purpose served by the imposition of such a restriction. An accurate reading of the status of the law today is that restrictions that so preclude individuals from becoming candidates for office are void and governmental units may not use such restrictions to keep otherwise qualified candidates from obtaining a position on the election ballot.

THEREFORE, IT IS MY OPINION:

> Candidates, otherwise qualified, are eligible to seek public office irrespective of whether they own real property.

Very truly yours,

MIKE GREELY
Attorney General