

VOLUME NO. 41

OPINION NO. 82

COURTS, CITY - Residency requirements for justice of the peace appointed as city judge;  
JUDGES - Residency requirements for justice of the peace appointed as city judge;  
RESIDENCE - Residency requirements for justice of the peace appointed as city judge;  
MONTANA CODE ANNOTATED - Sections 3-11-205, 7-4-4103, 7-4-4103(3);  
MONTANA CONSTITUTION - Article VII, section 9(4);  
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 80 (1980).

HELD: A justice of the peace may not be appointed to serve as a city judge in a town in which he does not reside.

5 September 1986

Alex C. Morrison  
Plains Town Attorney  
Plains MT 59859

Dear Mr. Morrison:

You have asked my opinion on the following question:

May a justice of the peace be appointed to serve as a city judge in a town in which he does not reside?

As you have pointed out in your opinion request, section 7-4-4103, MCA, was amended in 1981 to authorize the governing body of a town to appoint a city judge or to designate a justice of the peace to act as city judge as provided in section 3-11-205, MCA. § 7-4-4103(3), MCA. To the extent that a town may now appoint a city judge other than a justice of the peace, the amended statute supersedes 38 Op. Att'y Gen. No. 80 (1980). That opinion, however, did not address the residency requirements for a city judge.

The Montana Constitution, article VII, section 9(4), requires that every judge other than a Supreme Court justice "shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed." Section 3-11-205, MCA, permits a town council to designate a justice of the peace "of the county in which the town is situated" to act as city judge. A justice of the peace is a county officer who, as you point out, obviously does not reside at the time of election in more than one city or town within the county. The question that arises then is whether the Montana Constitution, article VII, section 9(4), requires that a justice of the peace appointed by a town to serve as city judge under sections 7-4-4103(3) and 3-11-205, MCA, must be a resident of the town which appoints him.

Article VII, section 9(4) was enacted as a part of the Montana Constitution of 1972. The Constitutional

Convention transcripts indicate that the residence provision was offered as an amendment from the floor on February 29, 1972, by Delegate Aronow on behalf of the Convention's Judiciary Committee. The only remarks concerning the purpose of the amendment were those of Delegate Berg, who stated:

Mr. Chairman, I simply want to point out that this amendment does cover, for example, Police Court judges and justices of the peace or any other inferior court judge, and it was the thinking of our committee that if a Police Court judge is either elected or, in the case of a commission-management form of government, appointed, he ought at least to live within the area where the taxpayers are paying his salary.

1972 Montana Constitutional Convention transcripts, February 29, 1972, p. 1121.

Although it may result in hardship to a town which does not have a county justice of the peace residing therein, my conclusion is that the language of article VII, section 9(4) does apply to city judges, whether they also happen to serve as justices of the peace or not. The language of the Constitution does not make exceptions for appointed city judges, and I cannot impute the intent to provide such an exception to the drafters of the Constitution. Delegate Berg's remarks concerning the purpose of the constitutional provision are consistent with my interpretation.

THEREFORE, IT IS MY OPINION:

A justice of the peace may not be appointed to serve as a city judge in a town in which he does not reside.

Very truly yours,

MIKE GREELY  
Attorney General