

**Towns, Incorporation of. Electors.**

Upon petition of 50 or more inhabitants residing in a town or village, addressed to the Board of County Commissioners, describing the limits of the proposed town and the several wards thereof, which territory must not exceed one mile for each 500 inhabitants, the preliminary steps for the incorporation of the town are taken and the Board of County Commissioners must thereupon order a census to be taken of the town, which must show at least 300 or more residents. The persons signing the petition must all be male residents, over the age of 21 years, full citizens of the United States, and have resided in the state one year and within the town at least thirty days. If the census

shows 300 or more, the Board of County Commissioners must call an election to vote on the question of incorporation, and only qualified electors residing within the proposed incorporation are entitled to vote on the question of incorporation.

Helena, Montana, September 7, 1909.

Hon. B. F. Maiden,  
County Attorney,  
Libby, Montana.

Dear Sir:

I am in receipt of your favor of the 1st instant, asking the opinion of this office with respect to the method of incorporating a town under the provisions of our statute, and as to persons qualified to vote at an election therefor.

In reply you are advised that the first thing necessary to be done is for 50 or more of the inhabitants residing in the territory to be incorporated to petition the board of county commissioners. This petition must describe the limits of the proposed town, and of the several wards thereof, which must not exceed one mile square for each 500 inhabitants. A map must be annexed to the petition giving the boundaries of the territory to be incorporated and the name of the town. Upon filing this petition, the board of county commissioners, at its next regular meeting or at a special meeting called for that purpose, must appoint some suitable person to take a census of the residents of the territory to be incorporated. The town cannot be incorporated unless this census shows that there are 300 or more inhabitants residing in the territory proposed to be so incorporated. The persons who sign this petition must all be male persons of the age of 21 years or over, and must be full citizens of the United States and have resided in the state one year and within the territory proposed to be incorporated 30 days immediately preceding the time of the signing of the petition. If the census shows 300 or more inhabitants the county commissioners must call an election to vote upon the question of the incorporation. At such election only qualified electors residing within the proposed corporation, and who are registered at the last general election in the precinct or precincts now embraced in the territory proposed to be incorporated, are entitled to vote on the question of incorporation. If the vote on the question of incorporation be carried, then the commissioners must call another election for the purpose of electing a mayor and aldermen. At such election the qualified electors who have resided within the limits of the town for six months and the limits of the ward for thirty days preceding the election are qualified to vote for the officers of the town.

I am of opinion that the qualification of the voter at such election should be the same as that prescribed by section 462, revised codes of 1909.

For your further information and guidance on the subject, I call your attention to the opinion of this office, rendered on March 22, 1906, to A. J. Walrath, county attorney, Bozeman, Montana, and reported in the official opinions of the attorney general, 1905-06, page 314; and also to

opinion of this department, directed to W. L. Ford, county attorney, White Sulphur Springs, Montana, bearing date May 12, 1908, and reported in official opinions of attorney general, 1906-08, at page 274.

Yours very truly,

ALBERT J. GALEN,

Attorney General.