

**Elector, Qualifications of. Qualifications, of Elector. Registration of Elector, Issuance of Certificate of. Certificate of Registration of Elector, Issuance of. County Clerk, Duty of to Issue Certificate of Registration.**

A person desiring to exercise the elective franchise must register at the precinct where he resides, and on election day must exercise his right to vote by voting at such place to the exclusion of any other place.

The issuance of the certificate of registration provided for in Sec. 7, Chap. 74, Laws of 1913, not being by law made mandatory upon the county clerk, nor specified in any particular who may be entitled thereto, nor upon what grounds it may be issued, it is the duty of the county clerk to refuse such certificate.

June, 1913.

Hon. Gerald Young,  
County Attorney,  
Thompson Falls, Montana

Dear Sir:

Complying with your request for an opinion from this office as to the proper construction to be placed upon Sec. 7 of Chap. 74 of the Session Laws of the Thirteenth Legislative Assembly, will say that after giving the matter due consideration I beg leave to advise that I have reached the following conclusion:

'By reference to the Constitution of Montana we find that Sec. 2 of Art. IX defines the qualifications of persons entitled to exercise the right to vote at all general elections. A portion of the section will bear quoting:

"Every male person of the age of 21 years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people: (1) He shall be a citizen of the United States. (2) He shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such length of time as may be prescribed by law."

Pursuant to the provisions of this section, the legislature has prescribed the qualifications respecting residence a voter must possess before he is entitled to exercise the elective franchise. Sec. 462 of the Revised Codes of Montana of 1907 provides:

"Every male person of the age of 21 years or over, possessing the following qualifications, if his name is registered, as required by law, is entitled to vote at all general and special elections, and for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people: (1) He must be a citizen of the United States. (2) He must have resided within the state one year, and in the county thirty days immediately preceding the election at which he offers to vote."

With respect to municipal elections, it is provided by the terms of Sec. 3231 (Idem.) as follows:

"All qualified electors of the state, who have resided in the city or town for six months, and in the ward for thirty days next preceding the election, are entitled to vote at any municipal election."

There is no mandatory provision of the constitution requiring registration to qualify one as a voter, but Sec. 9 of Art. IX provides:

"The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise."

It will thus be seen that the legislature is clothed with inherent power to pass registration and other necessary laws upon the subject. Its will in this regard is supreme and any law which it may pass must be assumed to have for its primary object the securing of purity of elections, and guarding against abuses of the elective franchise. Registration adds nothing to the qualifications of voters, but serves to identify them as persons qualified to vote.

Medicine v. Wood, 86 Ga. 699;

16 S. E. 21.

One, and perhaps the principal, end sought to be attained by registration laws is to provide the electors at large with the means whereby they may be informed in advance of an election, as to the persons who claim the right to vote at any given polling place, and thus prepare them to exercise the right of challenge, which is most effective in the hands of the public to guard against fraudulent voting; and the information necessary to properly arm the electors of any given polling place, is the registration list itself. It is, therefore, a general rule that an elector must vote in the precinct in which he resides.

15 Cyc. 292.

With this preliminary observation, so much of the 1913 law as is pertinent to the subject under discussion, is quoted as follows:

"The county clerk upon the issuance of the certificate herein provided for, shall make note thereon on the precinct register of the precinct in which the elector registered, at the time of the issuance of the certificate, by legibly stamping opposite elector's name, as it appears on said precinct register, the words, 'Must present certificate.' The said certificate shall be in the following form:

"State of Montana, County of .....—ss.

"This is to certify that ....., whose name appears on the Register Book of ..... County, under date of ....., in Precinct No. ...., is entitled to vote in any precinct in ..... County, upon presentation and surrender of this certificate to the judges of election, at the precinct in which the above named elector desires to vote.

"Witness my hand and seal of ..... Conty, State of Montana, this .... day of ....., 191.

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"County Clerk and Ex-Officio Registrar."

A careful reading of the entire law fails to disclose what the purpose of the legislature may have been in enacting the provisions above quoted. The law gives to no elector the right to demand its issue nor is any light given as to when or under what circumstances the certificate may issue, nor does it appear that the county clerk is directed or required to issue such a certificate. Certainly it cannot be reasonably inferred that the duty of the county clerk is mandatory, and upon demand he must issue to any registered voter the certificate in question. Were it the case that the possession of such certificate

by an elector would determine his right to vote and its absence would deprive him of the right to exercise the elective franchise, a question most difficult of solution would be here presented.

By turning to Sec. 35 of the act we find interalia:

"No person shall be entitled to vote at any election mentioned in this act, unless his name shall, on the day of election, appear in the copy of the official precinct register or check list furnished by the county clerk to the judges of election at the precinct at which he offers to vote."

This is not a new provision, but one contained in the registration law of 1911, which this act amends. The provision, however, with relation to the certificate, is new, and under the ordinary rules of construction the law would be that no person shall be entitled to vote at any election unless his name shall on the day of election appear on the copy of the official registration or check list furnished by the county clerk to the judges of election at the precinct at which he offers to vote, unless such voter presents and surrenders to the judges of election a certificate, as provided for in Sec. 7 of the act. And such a construction would be just and proper, provided that a result or condition in harmony with the spirit of our government would ensue and no question as to the right or duty of the clerk to issue the certificate, or the right of the voter to demand it, could here arise. The sweeping language of the certificate, however, has caused me to give this question considerable thought and I must confess that persistent search has brought to me but few authorities which might be used to guide me in reaching a decision. In Oregon in an early day, it was held that where a person has established for himself a settled residence and fixed domicile in any precinct in a county, there he must vote. Where, however, an individual is a bona fide resident of a county, but has no fixed residence or domicile in any particular precinct therein, he may vote in any precinct in which he may find himself on the day of election. In the course of the opinion, the court says:

"It appears that the persons referred to, though they resided within the county, had no fixed and settled domicile in any precinct therein, but that from the nature of their avocations, being for the most part stock raisers, herders and transporters of freight, were constantly changing the location of their temporary domiciles. There is no law upon the statute books which fairly reaches the circumstances of the persons whose right to vote is now being inquired into. General rules we have and a number of legislative enactments, which if we were to construe them narrowly might be cited in opposition to their right to vote, "but it is not our intention to place upon those laws an interpretation which, while it agrees with the letter, totally disregards the spirit thereof. Every qualified resident of a county has a right to cast his vote therein for county officers. As a matter of abstract justice, the mere fact of his being fixedly domiciled

in some one of the precincts therein would not invest him with greater rights than should be accorded to one who may chance to reside in a part of the county where no precinct has been erected, or to one whose employment requires him to shift his domicile from point to point with such frequency as to prevent him from acquiring the qualification of a residence of ninety days in any given precinct. All these classes are clearly interested in the proper administration of the affairs of the county as well as of the district or of the state, and should in all fairness be allowed to vote. It is true that when an individual has established for himself a settled residence and fixed domicile in any precinct of a county, there he must vote. When however an individual is a bona-fide resident of a county, but has no fixed residence or domicile in any particular precinct therein, he may vote in any precinct in which he finds himself on the day of election."

Wood v. Fitzgerald, 3 Oregon, 568.

It would appear at first blush that the doctrine announced in this case is decisive of the point in issue in this case, for our legislature, with respect to general elections, it will be noted, has provided that a citizen residing in the state for one year and in the county thirty days is entitled to vote, and with respect to municipal elections, he is entitled to vote if he possesses these qualifications, and has resided in the municipality for six months and in the ward for thirty days,—but though a man may be a resident of the state the required length of time, and of the county for thirty days, do these qualifications give him the right to vote in any precinct? The Constitution of Montana provides in Sec. 20, Art. VIII:

"There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices \* \* \* for the term of two years."

It will be noted that the justices are to be elected by the electors of such township. "Elector" has been defined as "one who elects or has the right to choice; a person who has by law or constitution the right of voting for an officer." Webster.

"One who has the right to make choice of public officers; one who has a right to vote." Words and Phrases, 3, 2341.

The phrase "electors of such cities" in Constitution 1899, Art. VI, Sec. 17, requiring judicial officers of cities not otherwise provided for to be chosen by vote of the electors of the city, is comprehensive enough to include all the persons entitled to vote within the municipality.

People v. Dooley, 75 N. Y. Sup. 360; 69 App. Div. 512.

"'Electors,' as used in Constitution, Art. XIII, Sec. 9, providing that all city, town and village officers, whose election or appointment is not provided for by the constitution, shall be elected by the electors of such cities, towns or villages or some division thereof, is synonymous with 'voters,'

and means those persons who have the qualifications of electors prescribed by the constitution."

State v. Tuttle, 9 N. W. 791; 53 Ore. 45.

3 Words and Phrases, 2341.

I think that our constitution contemplates, and the spirit of our institutions impels me to the belief that some residence is contemplated as a condition precedent to the right of a person to vote in the precinct where he presents himself for the purpose of exercising the elective franchise. Were it not so, it appears to me a chaotic condition would prevail which, in my opinion, would be entirely foreign to the spirit of our laws, for it would enable a man residing in the state one year and in the county thirty days to vote for township officers and precinct committee men of political parties in any precinct where such elector might desire to cast his vote, and in such school districts where such voter had no interest, and perhaps also in municipal election precincts or wards where the voter did not reside, and perhaps also would give him the right to vote upon financial questions, which would burden a township or precinct with taxation, the burden of which would not be borne in just proportion by the person thus casting his vote. Furthermore, the issuance of this certificate might be productive of great harm and injustice, for by its use the colonization of voters would be rendered most easy.

The same section of the law which provides for this certificate contains this pertinent language:

"Such general registration of all voters shall be required but once, and any person once registered shall thereafter, so long as he remains a qualified elector of the precinct from which he registers, be entitled to vote."

Upon the whole, we think the law contemplates that one desiring to exercise the elective franchise must register at the precinct where he resides, and there on election day exercise his right to vote by voting at such place to the exclusion of any other place. In *Weidmeyer v. Davis*, 83 No. E. 87 (Ill.), it is held that one rooming in one ward of a city and taking his meals in another is not a qualified voter in the latter. In *Shepprod v. Allen*, 17 N. E. 756 (Ill.), it is held that a person having no home or fixed abode, but living in a certain district temporarily, is not entitled to vote at an election for school directory therein. In *Cordwyle v. Jones*, 38 Mont. 590, our supreme court, with reference to our constitution and statutes upon the subject under consideration, said:

"Our constitution and statutes look to two primary objects:

- (1) familiarizing the elector with the condition and needs of his new home, and with the qualifications of candidates; and
- (2) preventing the colonization of illegal voters."

See also *Dowty v. Pittwood*, 23 Mont. 113.

In as much as registration of the elector is a condition precedent to his right to vote and when properly registered gives him the right to exercise the elective franchise, and the possession or non-possession of the certificate provided for in the section can neither add to nor

take from him any rights which the law says he may exercise, and further for the reason that the law does not make mandatory the issuance of this certificate by the clerk nor specify in any particular who may be entitled thereto or upon what grounds it may issue, you are advised that it is the duty of the clerk to refuse to issue the certificate, and you are directed to so inform the county clerk.

Yours very truly,

D. M. KELLY,

Attorney General.