

Road Supervisors, Residence of. Eligibility, of Road Supervisors.

A road supervisor must be a resident of the road district for which he is appointed, and since no part of a highway within the incorporated limits of a city or town is a county road, or any part of a road district, a person residing within a city or town is not eligible for road supervisor in another and different district.

March 23rd, 1914.

Hon. George R. Allen,
County Attorney,
Virginia City, Montana.

Dear Sir:

I am in receipt of your communication under date of the 13th instant, submitting for my opinion the two following questions:

"1. Is a man who resides within the limits of an incorporated city or town eligible for road supervisor of a road district which surrounds said town?

"2. Is a man residing in one road district eligible for road supervisor in another and different district?"

As to the first question, I will say that Chap. 72, Session Laws of the Thirteenth Legislative Assembly, commonly known as the highway law, provides in part as follows:

"Every road supervisor must, before entering upon the duties of his office, be a resident elector of the road district for which he is appointed."

It is very generally conceded that a county has no power over the streets or highways of an incorporated municipality, and our own code, in Sec. 3364, recognizes this doctrine:

"No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county."

Territory within the corporate limits of an incorporated city or town cannot therefore be included within a road district, since this would be an attempt to extend the jurisdiction of the board of county commissioners over territory from which they are excluded. Since the law provides that a road supervisor must be a resident elector of the district for which he is appointed, I am of the opinion that a resident of an incorporated city or town is not eligible for the office of road supervisor for districts surrounding the town.

In answer to your second question, it seems plain that if eligibility to the office of road supervisor requires residence within the district for which the supervisor is appointed, a person living in another district would be disqualified from holding the office in a district where he did not reside. This is in accordance with the results reached by you, in which I concur.

Yours very truly,
D. M. KELLY,
Attorney General.