

County Attorney, Qualifications of. Qualifications, for Holding Office of County Attorney. Primary Elections, Qualifications of Candidates; Residence Necessary Under. Candidates at Primary Elections, Qualifications; Residence Necessary to Be.

A person establishing a residence in a county, and who will have been admitted to practice law one year previous to the general election, is qualified to hold the office of county

attorney, and to have his name placed upon the primary nominating ballot, by petition. Such a person is not entitled to vote at the primary election.

July 9, 1914.

Hon. Frank P. Wicher,  
County Attorney,  
Red Lodge, Montana.

Dear Sir:

I am in receipt of your communication under date the 3rd instant, in which you submitted for my consideration three questions which were submitted to you by the county clerk of your county, which are as follows:

1. "Is an attorney who establishes a residence in your county about the middle of October, 1913, and who was admitted to practice about the 1st of November, 1913, qualified to have his name placed upon the official ballot at the primary election to be held August 25th, as a candidate for the nomination for the office of county attorney?"
2. "Is he entitled to vote at such election?"
3. "Can he be a candidate at all for the office of county attorney?"

In answer to the first question I will say that in my opinion such a person is entitled to have his name placed upon the official ballot at the primary election, providing he has the sufficient number of signers upon his petition. The restrictions upon persons holding the office of county attorney, are found in Section 7 of Article IX of the Constitution.

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment."

And Section 19 of Article VIII:

"There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the District Court, except that he must be over the age of twenty-one years, etc."

The qualifications of a judge, so far as these questions are concerned, are found in Section 15 of Article VIII, and requires a residence in the state at least one year next preceeding his election. The requirements of residence in the state relates to the time of election, and by election is meant the election at which all of the voters of the county choose their officers, or a general election. If, then, the person seeking office will at the time of his election have been a resident of the state for one year next preceding that election, he will be eligible to hold the office, and as there is no requirement of residence for nomination for office, a person will be entitled to the nomination if he may qualify for the office at the time of the regular election.

Section 12 of the Primary Law, found at page 578 of the Session Laws of the 13th Legislative Assembly, provides:

"No person who is not a qualified elector shall be qualified to join in signing any petition for nomination, or to vote at said primary nominating election."

This provision would bar such a person as you describe from voting at the primary election.

What has been said in answer to question No. 1, I think, answers your third inquiry. The constitutional requirements of residence apply to the time of the election of a person to office, and not to his nomination. In as much as the person mentioned by you established a residence in this state in the middle of October, he will have attained the necessary year's residence previous to the general election, and I am of the opinion that he, therefore, can be a candidate for the office of county attorney. Somewhat similar questions were under consideration in two opinions heretofore rendered by this office, found in Volume 1, Opinions of Attorney General, at page 299, and page 406, to which your attention is respectfully called.

Yours very truly,

D. M. KELLY,  
Attorney General.