

Mayor, Qualifications for Office of. Alderman, Qualifications for Office of. Qualifications, for Office of Mayor, or Alderman.

A person who has resided for more than two years upon territory annexed to a city, if qualified in other respects, is qualified for the office of mayor or alderman of such city.

March 24th, 1913.

Mr. W. C. Husband,
Deputy County Attorney,
Harlowton, Montana.

Dear Sir:

I am in receipt of your favor of the 20th instant, asking for an opinion from this office upon the questions as follows:

"First—A candidate for the office of mayor of Harlowton is a resident of territory which became included in the corporate limits of Harlowton by ordinance of March 21, 1912. He has been a resident of this territory for more than five years. In all respects he is qualified to hold the office of mayor, provided he can qualify under the statutory requirement that he should be a resident of the city for two years next preceding his election. Does the fact that this territory became a part of the city only upon March 21, 1912, make this man such a resident of the city as entitles him to qualify for the office?

"Second—Could any resident of this new territory, who has resided there for two years and upwards, qualify for the office of alderman?"

Sec. 3225 provides that a person to be eligible to the office of mayor must be a resident of the city for two years next preceding his election. Sec. 3228 prescribes substantially the same qualifications for the office of alderman. The questions which you propounded do not seem to have been considered by the courts to any great extent, and seem at first appearance to involve some considerable doubt. However, I find that the Supreme Court of Ohio in the case of *Sinks v. Reese*, 19 Ohio State, 306, and 2 Am. Rep. 397, passed upon a question involving the same principle; the Supreme Court of Kentucky in *Gibson v. Wood*, 49 S. W. 768, 43 L. R. A. 699, and again in *Meffert v. Brown*, 116 S. W. 779, has passed upon the identical question upon which you ask for an opinion. In each of these cases the court arrived at the conclusion that the residence of all inhabitants of new territory so incorporated into a city should be considered after that time as a residence of the city itself from the time the residence began upon the territory itself. In the case of *Gibson v. Wood*, the court uses this language:

"In the case at bar, the defendant, Wood, has done no act by which he should lose any of his political rights, either as a resident of the town of Enterprise or as a resident of the City of Louisville. The City of Louisville has seen fit to incorporate the Town of Enterprise, and make it a part of the

City of Louisville. In my opinion, when the City of Louisville annexed the Town of Enterprise it adopted the conditions then existing in the Town of Enterprise, as to residence and citizenship, as a part of the city government, and former citizens of the Town of Enterprise, who thus became citizens of the City of Louisville, were entitled to all their rights, as former citizens of Enterprise, in determining their eligibility to office in the City of Louisville. When the defendant and his territory become parts of the City of Louisville, they are entitled to all the benefits that belong to all the other property and citizens of the City of Louisville. To hold otherwise would be to bring persons into the City of Louisville, and to burden them with city taxation and all the burdens of our city government, without granting them all the privileges which it had granted to its other residents. It would put the burden on all residents alike, but would give different rights to different classes of citizens, by distinguishing the old resident from the annexed resident."

Upon the authority of these decisions I would advise you that the candidate about whom you inquire is qualified for the office of mayor, and that a person who has resided for more than two years upon the annexed territory may qualify for the office of alderman, if qualified in other respects.

Very truly yours,

D. M. KELLY,
Attorney General.