

Counties—New Counties—Officers — Elections—Qualifications.

A person elected as an officer in a newly created county, if possessed of the constitutional qualifications, is entitled to hold the office even though he was registered in a precinct lying wholly outside of the boundaries of such new county.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have asked my opinion whether a newly elected officer in a newly created county may qualify for the office to which he has been elected if he is a registered elector in one of the old counties in a

precinct which is outside of the boundaries of the new county, and if he has resided within the boundaries of the new county for three months or more prior to the election creating the new county.

Section 2 of Article IX of the Constitution, which prescribes the qualifications of electors, is as follows:

“Every person of the age of twenty-one years or over, possessing the following qualifications, shall be allowed to vote at all general elections and for all officers that now are, or hereafter may be elective by the people: First. He shall be a citizen of the United States; Second. 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 time as may be prescribed by law; provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this Constitution; provided, that after the expiration of five years from the time of the adoption of this Constitution, no person except citizens of the United States shall have the right to vote.”

Section 9 of the same article authorizes the Legislature to pass a registration law and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

Section 11 of the same article prescribes the qualifications to hold office, and is as follows:

“Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this Constitution, and subject to such additional qualifications as may be prescribed by the Legislative Assembly for city offices and offices hereafter created.”

In the case of *State ex rel. Land v. Furnish et al*, 48 Mont. 28, 134 Pac. 297, the Court said:

“It is a principle long established that registration is no part of the qualifications of an elector and adds nothing to them; it is merely a method of ascertaining who the qualified electors are, in order that abuses of the elective franchises may be guarded against.”

It will be noticed that Section 2, Article IX, of the Constitution, in prescribing the qualifications of an elector, provides that he must have resided in the state one year, and in the county, town or precinct such time as may be prescribed by law. Section 540, Revised Codes of 1921, then requires that an elector must have resided in the county thirty days immediately preceding the election at which he

desires to vote, while Section 5010 provides that persons to be entitled to vote at city or town elections must have resided in the city or town for six months and in the ward for thirty days next preceding the election, but there is no provision in our statutes requiring a residence for any particular length of time in an election precinct.

It is, therefore, my opinion that if the person elected as an officer of the newly created county possesses the qualifications prescribed for electors by Section 2 of Article IX of the Constitution, and such person was an actual and bona fide resident within the boundaries of such newly created county for thirty days immediately preceding the election at which he was elected, then such person is entitled to qualify and to hold such office, even though he was registered in a precinct lying wholly outside the boundaries of such newly created county.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.