

Drains—Drain Commissioner—Qualifications.

Drain commissioner must be a land owner and resident of the county or counties in which the division lies but not necessarily within the district itself.

Mr. T. H. Burke,
Secretary,

April 15, 1931.

Valley Center Drain District,
Hardin, Montana.

My dear Mr. Burke:

You have requested an opinion on the following question:

“Is it necessary for a drain commissioner to be a land owner within the division for which he is elected?”

Section 7280, R. C. M. 1921, before its amendment by chapter 50, laws of 1925, provided for the appointment of three commissioners, and if the district was situated in two or more counties not more than two of said commissioners could reside in any one of said counties. It was also provided in said section that the ownership of land within the district was not a disqualification of a person acting as such commissioner.

Chapter 50 aforesaid, which was house bill number 220 of the acts of the nineteenth legislative assembly in its original form as introduced in the legislature, read in part as follows:

“In making such appointments one commissioner shall be appointed from each division and each person so appointed a commissioner must be an actual resident in the division for which he is appointed such commissioner. If the district is

situated in two or more counties, not more than two of said commissioners shall reside in one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner."

It will thus be seen that neither section 7280, R.C.M. 1921 nor the amendatory law in its original form required the commissioner to be a land owner within the division for which he is elected. House bill 220 as originally introduced would have required him to be a resident of the division but not a land owner. Said bill was amended during its course through the legislature so that the provision above referred to was amended as it now appears in the session laws of 1925, to-wit:

"In making such appointments one commissioner shall be appointed from each division and each person so appointed a commissioner must be an actual land owner and resident of the county or counties in the division for which he is appointed such commissioner. If the district is situated in two or more counties, not more than two of said commissioners shall reside in one of said counties. Ownership of land within the district shall not disqualify a person from acting as a commissioner."

In my opinion, the above provision of the law as finally enacted does not require the commissioner to own land in the division but it is sufficient if he owns land in the county or counties in the division. Thus, he may be a land owner in the county but not within the boundaries of the district.

Section 7283, R.C.M. 1921, as amended by said chapter 50, relating to the election of commissioners, provides that one commissioner shall be "elected from each division of which he must be an actual land owner and resident of the county or counties."

This amendment was also a part of said house bill 220, and in its original form also provided for mere residence in the division but it was amended likewise during the course of the bill through the legislature so that it would conform with the amendment to section 7280. The amendment makes the phraseology somewhat awkward, but, in my opinion, it merely means what is meant by similar phraseology in the amendment to section 7280, namely, that he must be a land owner and resident of the county or counties in which the division lies but not necessarily within the division itself.

Very truly yours,

L. A. FOOT,

Attorney General.