

"A person was nominated for a county office in Jefferson County, at the primary election on July 17, 1934, by having his name written in on the ballots. At the time of the primary election, he was not a registered elector of this county, but was a registered elector in another county in this state. On the 26th day of July, 1934, he registered in this county by transferring his registration from another county. In his registration card, he stated that he had been a resident of this county for six months. On the 27th day of July, 1934, that being within the ten days after the primary election at which he received such nomination, he filed with the county clerk of this county a written declaration indicating his acceptance of said nomination and paid to that officer the fee required for filing such petition. Is this person qualified to file such nominating petition as a candidate for a county office in this county?"

We know of nothing in the constitution or statutes that would render the person described ineligible as a candidate for county assessor in your county.

Section 4723 R. C. M. 1921 provides: "No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised, or for which he is elected." The election referred to in this section, we think is the November election. No one is elected to office at the primary election, but merely qualifies to come up at the regular election. Some of the court decisions hereinafter referred to relate to the regular and not primary elections but we think the rules laid down will, in a general way, apply here.

The decision in *State v. Furnish*, 48 Mont. 28, cited by you, we think, is determinative of your question. The Supreme Court there held that registration prior to exercising the privilege of voting was not a part of the qualifications of an elector, but a means of eliminating abuses in elections. Section 540 R. C. M. 1921 provides in part that a voter must be a citizen of the United States, a resident of the state one year and of the county where he votes, thirty days next preceding the election, and twenty-one years of age or over.

### Opinion No. 585

#### Elections—Candidates—Nominations —Qualifications—Counties.

HELD: One who was nominated for county office by having his name written in the ballot and who was not a registered elector at that time but who had become a registered elector by the time he accepted the nomination is entitled to be the candidate in the general election of the party so nominating him.

August 1, 1934.

You request an opinion from this office on the following matter:

This fixes the legal status of an elector as referred to in Section 4723. Except where restricted by statutes an elector is qualified to hold office.

The general rule on eligibility is treated quite fully in 22 R. C. L. pages 400-402, and in *Hoy v. State*, 168 Ind. 506, 11 Ann. Cas. 944 and in note at page 950. 22 R. C. L. at page 402, says: "The courts do not agree as to the time at which the eligibility of a person for public office must be determined. \* \* \* One line of authorities holds the time of election is the proper time \* \* \* but the weight of authority appears to be that where the word "eligibility" is used \* \* \* it has reference to the qualification to hold office, rather than the qualification to be elected to office."

Disability to hold office existing at the time of election may be removed before the time arrives to qualify. Naturalization after election and before qualification has been allowed in cases cited in 22 R. C. L. 403.

In *State v. Huegle*, 112 N. W. 234, the Supreme Court of Iowa held that "the statutory qualifications for public office must exist either at the time of election, or at the time of entering on the duties of the office, as the statute prescribing the qualifications may direct. \* \* \* When the words in a statute prescribing the qualifications \* \* \* are 'eligible to office' the eligibility must exist at the time of entering office, and need not exist at the time of election."

"Eligibility is to be presumed rather than denied." (*State v. Schragg*, 291 Pac. 321, 158 Wash. 74.)