

It is our opinion that citizenship is not one of the required qualifications of a drainage district commissioner for the following reasons:

Our drainage law was enacted originally under Chapter 106, Laws of 1905, wherein the matter of drainage was left entirely with the county commissioners, with authority that they should appoint a drain commissioner. It was just county-wide. Under Chapter 146, Laws of 1909, we find that provision was made for the organization of drainage districts which might comprise land in one or more than one county. This district then was divided into three subdivisions, for each of which subdivisions a drain commissioner was appointed. The qualifications of such commissioner were that he be the owner of land within the district and must be a **resident** of the county in which the division of the district, or some portion thereof for which the commissioner was elected, is situated. This act provided that the commissioners should qualify in the same manner as justices of the peace, which might lead one to believe that citizenship was a requirement, since a justice of the peace must qualify as a citizen. (Section 8865, R. C. M., 1935.) Under Chapter 129, Laws of 1921, the law was again revamped and as far as pertinent to the question submitted, Section 16 thereof reads:

"* * * the court * * * shall appoint three **suitable, competent** persons as commissioners, * * *. If the district is situated in two or more counties, not more than two of said commissioners shall reside in any one of said counties * * *."

And again under Section 1 of Chapter 50, Laws of 1925 (7280, R. C. M., 1935), we have the said section amended to read as follows:

"* * * the court * * * shall appoint three **suitable** and **competent** persons * * * 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 * * *."

Nowhere during the entire legislative action upon the subject do we find citizenship as a requirement to the qualification of a commissioner of the drainage district other than the pro-

Opinion No. 224.

Drainage Districts—District Commissioners.

HELD: Citizenship is not a requirement of qualification of commissioner of a drainage district.

April 10, 1940.

Mr. T. H. Burke
Secretary, Valley Center Drain District
Billings, Montana

Dear Mr. Burke:

You have submitted the following question:

"Is it necessary that a commissioner of a drainage district be a citizen of the United States?"

vision of Chapter 146, Laws of 1909, above mentioned, which is a feature that could well have been included had the legislature so intended. In construing statutes we endeavor to ascertain and declare what is in terms or in substance contained therein. We should not insert what has been omitted nor have we the right to omit what has been inserted. (Section 10519, R. C. M., 1935.) Drainage commissioners, under the case of *In re Valley Center Drain District*, 64 Mont. 545, 554, are not constitutional officers but are mere agents of the state.