

## No. 25

**COUNTY COMMISSIONERS—MILEAGE—  
RESIDENCE—QUALIFICATIONS**

- Held:** 1. County Commissioner need not, after his election, remain a registered voter in the district from which he was elected but must be an elector of the county.
2. Residence of county commissioner, for purpose of determining mileage, is not conclusively determined by the place where he votes.

February 18, 1941.

Honorable John Oliver  
House of Representatives  
State Capitol  
Helena, Montana

Dear Mr. Oliver:

Your letter of February 1 requests my opinion as follows:

“Since the law provides that County Commissioners shall be elected from County Districts, if a County Commissioner elected in and whose home residence is in district No. 3 can he continue to hold his office where he is registered to vote in and does vote in district No. 1 sixty miles from his district residence and forty miles from the limits of the district in which he was elected, and can he draw mileage from the County when he claims his voting residence is in District No. 1?”

Answering the questions you present in respective order, Section 4 of Article XVI of the Montana Constitution prescribes the only constitutional qualifications governing eligibility of county commissioners to be elected and hold office. The pertinent portion of this section provides that such officers, to be elected, “shall be selected from the residents and electors of the district” and that no one shall be elected “who has not resided in said district for at least two years next preceding the time when he shall become a candidate for such office.” It appears from the foregoing constitutional provisions that the qualifications concerning residence and voting, contained in the first portion of the section, pertain to “selection” and therefore mean that these qualifications must exist at the time such officer is selected. Section 4453 of the Revised Codes of Montana, 1935,

requires that "Each member of a board of county commissioners must be an elector of the county he represents." While this particular section might be construed to mean that such officer must be an elector during all the time he holds office, as well as when he becomes a candidate or is elected, it is only required that he be an elector of the county he represents.

In this state the qualifications for holding office are prescribed either by constitutional provisions or legislative enactment.

State ex rel. Shea v. Cocking et al., 66 Mont. 169, 213 Pac. 594.

The foregoing provisions being the only ones particularly applicable to the office of county commissioner, the first question should be answered in the affirmative.

As to the second question you present, Section 33 of the Revised Codes of Montana, 1935, defines "residence" and that section as it relates to your inquiry provides:

"Section 33. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purposes, and to which he returns in seasons of repose.
2. There can only be one residence.
3. A residence cannot be lost until another is gained . . .
7. The residence can be changed only by the union of act and intent."

In Snyder v. Boulware, 109 Mont. 427, 432, 96 Pac. (2nd) 913, our Supreme Court said,

"The word 'reside' may have a different meaning according to the connection in which the word is used. 54 C. J. 702. As used in section 4, Article XVI, the word signifies the place where the candidate has actually lived and maintained a home and where he was personally present."

The fact that one votes at a certain place does not conclusively establish residence at such place for other purposes. 17 Am. Jur. 644.

Tested by the foregoing authorities it would appear that your second question must also be answered in the affirmative, if the "home residence" described in your letter falls under Subsection 1 of Section 33 (supra), and such officer would be permitted to receive mileage to and from his residence.

Sincerely yours,

JOHN W. BONNER  
Attorney General