

Opinion No. 179.

**Schools and School Districts—Trustees,
School—Elections, School.**

Held: A school trustee is not precluded from holding such office because he is not registered to vote and the residence of such trustee must be determined from the facts in accordance with the rules of Section 574, Revised Codes of Montana, 1935.

July 6, 1946:

Mr. Chester E. Onstad
County Attorney
Powder River County
Broadus, Montana

Dear Mr. Onstad:

You have requested my opinion concerning the eligibility of a school trustee to hold office. You advise me the trustee in question maintains a home in Wyoming and owns a large ranch in Montana. You also state he was a registered voter in Wyoming for the 1944 election and is not now registered to vote in Montana.

The qualifications for holding public office are prescribed by the Constitution and legislative enactment. Section 11 of Article IX of the Montana Constitution provides:

“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.”

The qualifications for electors at school elections are found in Section 1002, Revised Codes of Montana, 1935, as amended by Chapter 83, Laws of 1939, and Chapter 65, Laws of 1941, which provides:

“Every citizen of the United States of the age of twenty-one years or

over who has resided in the State of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat."

The qualifications of a school trustee are found in Section 985, Revised Codes of Montana, 1935, which reads as follows:

"Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district."

In the facts which you submitted for my consideration, you stated the trustee whose right to hold office is questioned is not registered to vote in the State of Montana.

Our Supreme Court in the case of *State v. Furnish*, 48 Mont. 28, 134 Pac. 297, 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 franchise may be guarded against."

The Supreme Court of Nevada had under consideration the same question, and held:

"... that if, by the expression 'qualified voters,' the legislature of 1939 had intended that registration be required (as a qualification of holding office) they would naturally have used the word 'registered,' as was done, for example, by the legislature of North Carolina when the words 'qualified registered voters' were employed..." (*Gilbert v. Breithaupt*, 60 Nev. 162, 104 Pac. (2d) 183.)

Meffert v. Brown, 132 Ky 201, 116 S. W. 779, 780, 1177.

42 American Jurisprudence, page 918.

From the foregoing it would appear to me that the fact the trustee is not registered to vote would preclude him from voting but will not disqualify him from being elected to and holding the office if otherwise a qualified voter. However, Section 1002, as amended, requires that electors must have resid-

ed in the State of Montana for one year and in the school district for thirty days. Any person eligible to hold the office of trustee must meet such residence requirements. This raises a question of fact.

Section 574, Revised Codes of Montana, 1935, sets out rules for determining the place of residence for the purpose of voting. Subsection 4 of Section 574 states that a person who leaves his home to go into another state or district for temporary purposes does not lose his residence "provided he has not exercised the right of the election franchise in said state or district." If the trustee in question voted at the election in Wyoming in the year 1944 his residence in Montana could only be acquired subsequent to that date.

Under the rules set out in Section 574, it was necessary for the trustee to move to Montana with the intent to remain there as a resident, which is a question of fact to be determined from all the evidence available.

It is therefore my opinion that a school trustee is not precluded from holding such office because he is not registered to vote and that the residence of such trustee must be determined from the facts in accordance with the rules of Section 574, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General