

Opinion No. 192.

County Commissioners—Elections—
Nominations—Candidate, When
One Becomes a.

Held: To comply with Article XVI, Section 4, Montana Constitution, a person seeking office of county commissioner must actually have lived and maintained a home, where he was personally present, within his particular commissioner district for at least two years preceding the time when he files his petition for nomination. Removal of such residence from his particular commissioner district—subsequent to his filing the petition for nomination but prior to election—does not disqualify such a candidate for county commissioner, so long as he remains an elector of the county he seeks to represent.

August 9, 1946.

Mr. M. L. Parcels
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Parcels:

You have stated this problem:

An unexpired term on the board of county commissioners is to be filled

at the general election. The vacancy is in commissioner district number three. X filed a petition for nomination for the office. At the time he filed, he owned land in district number three, owned a home therein, and lived there. However, after filing his petition for nomination, X rented a farm outside commissioner district number three and moved to the new location with his family. Question: Is X still qualified, under Montana law, to seek the office of county commissioner from commissioner district number three?

Article XVI, Section 4, of the Montana Constitution, provides in part:

“. . . the member or members of the board (of county commissioners) to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years preceding the time when he shall become a candidate for said office.

“When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election when a commissioner shall be elected to fill the unexpired term. (Emphasis mine.)

In *Snyder v. Boulware*, (1939) 109 Mont. 427, 431, 432, 433, 96 Pac. (2d) 913. Our court interpreted the word “resided,” as used in the above-quoted section of our Constitution. The court ruled:

“. . . 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. This follows from the purpose of the provision.

“The object to be accomplished by that section was to disqualify those who were not familiar with the needs of the particular section of the county. To accomplish the purpose of the section, the word ‘reside’ must be held to mean an actual living in the district . . .”

The question then becomes: Since no one shall be elected a member of the board of county commissioners who shall not have resided in the district for at least two years preceding the time when he shall become a candidate for county commissioner, just when does a person become a “candidate”? Does the filing of the petition for nomination constitute one a candidate? Or must a person succeed in acquiring a party nomination at the primary nominating election before he becomes a candidate?

“A candidate is one who seeks or aspires to some office or privilege, or who offers himself for the same; a person offering himself to the suffrage of the electors; one put forward for election, whether with or against his own will; one put forward by others for an office; one who is selected by others for an office or place; a person considered worthy or likely to attain some dignity, or to come to some place or end.”

29 C. J. S. 19

9 C. J. 1272

The Supreme Court of Idaho discussed the question—“When is a Person a Candidate?”—in the case of *Adams v. Lausdon* (1910) 110 Pac. 280, 287. In that case the corrupt practices act of Idaho was the basis of suit, and much of the judgment of the court is not pertinent here. However, I subscribe to the reasoning of the Idaho court relative to constitutional interpretation:

“In *Leonard v. Commonwealth*, 112 Pa. 607, 4 Atl. 220, the court had under consideration the question of when a man became a candidate for an office under the provisions of the Constitution and statutes of Pennsylvania, and in the course of the opinion the court said: ‘The word “candidate” in the Constitution is to be understood in its ordinary popular meaning, as the people understood

it those votes at the polls gave that instrument the force and effect of organic law. Webster defines the word to mean "one who seeks or aspires to some office or privilege, or who offers himself for the same." This is the popular meaning of the word "candidate." It is doubtless the meaning which the members of the constitutional convention attached to it, and the sense in which the people regarded it when they came to vote. We therefore say in everyday life that a man is a candidate for an office when he is seeking such office. It is **begging the question to say that he is only a candidate after nomination**, for many persons have been elected to office who were never nominated at all . . . When laws are made by a popular government, that is to say, "A government of the people, by the people, and for the people," we may safely assume that words in a statute or a constitution are used in a sense which the people who made the statute or constitution understood them . . . As before observed, the constitution must be construed liberally so as to carry out, and not defeat, the purpose for which it was adopted . . ." (Emphasis mine.)

In the text of Opinion No. 220, Volume 20, Report and Official Opinions of the Attorney General, I made this statement:

"The popular conception of the word candidate is a person seeking office. Under our election system a person definitely becomes a seeker of the office at the time such person files his nominating petition or otherwise files such papers as the law requires for having the name placed on the ballot at a primary or general election."

In that opinion I stated a candidate for county commissioner must have resided within his particular commissioner district for a period of at least two years next preceding the time when he shall file his nominating petition or otherwise place before the clerk and recorder his certificate of nomination under Sections 612 or 615, Revised Codes of Montana, 1935; and now I state the further opinion removal of residence from his particular commissioner district, subsequent to his be-

coming a candidate by virtue of filing a petition for nomination but prior to election, does not disqualify a person seeking election to the office of county commissioner, so long as he remains an elector of the county he seeks to represent.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General