

VOLUME NO. 34

Opinion No. 13

ELECTIONS - Residence of minors and others for voting purposes. Article IX, sections 2, 3, and 9, Montana Constitution; sections 23-3022, 64-101, and 83-303, R.C.M. 1947.

- HELD:**
- 1. Unemancipated minors are residents of the place where their parents reside and may register to vote in that place if they will be 18 years of age at the time of the election.**
 - 2. Emancipated minors and those persons 19 years of age or over may register to vote in the community in which they live if they intend to make that community their residence. Mere presence at a college or university is not sufficient to establish residence in a community but must be coupled with an actual intent to make that community their residence.**
 - 3. A person who is attending an institution of learning may retain his original residence for voting purposes if he so intends that place to be his residence.**

September 9, 1971

Mr. Geoffrey L. Brazier
Deputy County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

Dear Mr. Brazier:

You have asked my opinion on the following question:

“Whether under the provisions of R.C.M. 1947, 23-3022, as possibly modified by Chapter 240, Montana Session Laws of 1971, and the 26th Amendment to the United States Constitution, Montana college students may register to vote in the community where they are attending college, or must they register in their home town or the home town of their parents. In other words, for the purpose of registering to vote, what is the proper residence of college students?”

From the foregoing, I feel that you request an opinion regarding only those students who come from Montana originally; however, your second sentence indicates that the problem could be broader and would pertain to all students attending the various colleges and universities of this state, regardless of their original residence. The problem further encompasses all young people who are 18 years of age or older and who are not enrolled in our colleges and universities. Because of the many questions, I will deal with the entire scope of the problem raised by the lowered voting age under the federal constitution as it pertains to the proper residence of all young people 18 years of age or over.

A proper starting place for a discussion of this problem is with the 26th Amendment to the United States Constitution. This amendment, which was recently ratified by three-fourths of the states on June 30, 1971, provides in section 1 that: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age.”

Article IX, section 2, Montana Constitution, reads in part:

“Every person of the age of nineteen (19) years or over possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. . . .”

Since the United States Constitution is a superior body of law, it will control over the Montana constitutional provision, and all persons 18 years of age or over who meet the other qualifications of law, shall have the right to vote.

Montana has adopted constitutional and statutory provisions regarding residency requirements for the purpose of voting. Article IX, section 3, Montana Constitution, provides:

“For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, **nor while a student at any institution of learning**, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison.” (Emphasis supplied)

Article IX, section 9, Montana Constitution, reads:

“The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.”

In following the mandate of the constitution the legislature has passed a number of laws dealing with elections to be held in Montana. Section 23-3022, Revised Codes of Montana, 1947, provides in part:

“For registration of voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation. . . .

* * *

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home. . . .

* * *

(8) The place where a man’s family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence. . . .”

* * *

A number of questions then arise in determining the residence of college students. In answer to these, it should first be noted that section 64-101, R.C.M. 1947, provides:

“Minors are: 1. Males under nineteen (19) years of age;
2. Females under nineteen (19) years of age.
All other persons are adults.”

Hence, for the purposes of determining residence, those young people 19 years of age or over are deemed adults under Montana law. Without reaching the question of college students yet, it should be further noted that section 83-303, R.C.M. 1947, provides:

“Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

* * *

4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

* * *

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.”

It is my conclusion that the above rules should be applied in determining the voting residence of a minor under Montana law and, therefore, for the purpose of voting, an unmarried, unemancipated minor must maintain the residence of his or her parents or parent under the conditions described in section 83-303, *supra*.

As stated in the Montana constitution and laws of Montana quoted above, for the purpose of voting, no person shall be deemed to have gained or lost a residence while a student at any institution of learning. This provision means that mere presence or absence because of attending an institution of learning proves nothing as to residence for voting, and that other relevant factors must be looked at in making such a determination. A number of states with similar constitutional provisions have held that the factor of attendance at an institution of learning is to be considered a neutral factor in determining residence for voting. In *Chomeau v. Roth*, (1934) 230 Mo. App. 709, 72 S.W.2d 997, the Missouri court said at page 999:

“The fact that the challenged voters were students is in and of itself not at all decisive of the case. Our Missouri Constitution provides in article 8, §7 (Const. art. 8, §7, p. 677, Mo. St. Ann.), that for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while a student of any institution of learning. So the Constitution leaves the student much as it finds him, permitting him either to retain his original residence for voting purposes, or to take up a residence wherever his school is located if he so elects.”

A number of similar cases are annotated under the heading, “Residence or domicile of student or teacher for purpose of voting” in 98 ALR.2d 488. At page 490 of that annotation it is said that:

“Many states have a provision in their constitutions that for voting purposes no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student at any institution of learning. This has the effect of nullifying the fact of a student’s physical or bodily presence as a step in determining his residence, and the courts generally treat it as a neutral factor, ascertaining his residence from the evidence of his intent.”

As with any question of residence or domicile, the resolution of the matter should rest finally upon the intent of the party seeking a change in residence coupled with an act of removal. Section 83-303(7), R.C.M. 1947, says, “The residence can be changed only by the union of act and intent.” Thus, the residence of any person should be determined in the final analysis on the intent of the party seeking a classification as a resident of another county or state, and the act of removal from his former residence.

THEREFORE, IT IS MY OPINION that in addition to the guidelines set forth in the Montana election laws at 23-3022, R.C.M. 1947, Montana law also provides that:

1. Unemancipated minors are residents of the place where their parents reside and they may register to vote in that place if they will be 18 years of age at the time of the election for which they seek registration. They cannot by their own act change that residence.
2. Emancipated minors and those persons 19 years of age or over may register to vote in the community in which they live, including a college or university town, if they intend to make that community their residence. For these purposes, mere presence at the college or university is not sufficient: there must

be an actual intent to make that community their residence in addition to their physical presence. The intent required is to be judged as it would be for any other person seeking to register.

3. A person who is attending an institution of learning can retain his original residence for voting purposes if he so intends that place to be his residence.

Very truly yours,

ROBERT L. WOODAHL
Attorney General