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Opinion No. 35

OFFICES AND OFFICERS - QUALIFICATIONS - Age requirements for holding office. Article IX, sections 2 and 11, Constitution of Montana.

HELD: A person eighteen years of age or older may, if otherwise qualified, be a candidate for any public office in Montana for which no minimum age limitation is specified.

March 3, 1972

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Secretary Murray:

You have requested my opinion on the following question:

In view of the fact that the twenty-sixth amendment to the United States Constitution lowered the age for voting in all elections to 18, are 18-year-olds eligible for election to public office in Montana if they otherwise meet the statutory and constitutional qualifications?

The 26th Amendment to the United States Constitution 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, Constitution of Montana, 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 hereinafter 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 controlling over the Montana constitutional provision, all persons 18 years of age or over who meet the other qualifications of law shall have the right to vote.

Article IX, section 11, Constitution of Montana, 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.”

Qualifications for the several public offices at all levels of government vary with the office. In some instances, such as for the office of school trustee (see section 75-5913, Revised Codes of Montana, 1947) any person qualified to vote in the election for the office may also be a candidate for the office. In other instances, a specific age is one of the requirements to hold a certain office. For example, Article VII, section 3, Constitution of Montana, provides:

“No person shall be eligible to the office of governor, lieutenant-governor, or superintendent of public instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have

resided within the state or territory two years next preceding his election.”

The above example illustrates the fact that some public offices require as a qualification for holding office that the candidate have attained a certain minimum age. In those cases where the constitution or statutes of Montana require as a qualification to hold a certain office that a person have attained a specific age, i.e., thirty years of age at time of election for governor, the person running for office must meet the specific age requirement. If no age is specified as a qualification for holding a particular office, then pursuant to Article IX, section 11, supra, anyone meeting the age requirement for voting may hold the office if qualifications other than age are met.

THEREFORE, IT IS MY OPINION that a person who is eighteen years of age or older may, if he otherwise qualifies, be a candidate for any public office in the state of Montana for which there is not specified a minimum age limitation.

Very truly yours,

ROBERT L. WOODAHL
Attorney General