

## VOLUME NO. 35

## Opinion No. 56

**ELECTIONS — School districts, elector residence qualifications, challenges; SCHOOLS AND SCHOOL DISTRICTS — Elections, elector residence qualifications, challenges. Sections 23-3015, 23-3022, 75-6410 and 75-6412, R.C.M. 1947.**

**HELD:** 1. An elector in a school election may be challenged on election day by any registered elector of the district.

2. A challenged elector in a school election may be disqualified from voting by the election judges if he is not a resident of the school district in which the election is held.

January 2, 1974

Mr. Conrad B. Fredricks  
Sweet Grass County Attorney  
Office of the County Attorney  
Big Timber, Montana 59011

Dear Mr. Fredricks:

You have requested my opinion on the following question:

May an elector in a school election be successfully challenged on election day on the grounds that he or she is not a resident of the school district in which the election is being conducted?

Qualifications of electors at school elections are specifically set out in section 75-6410, Revised Codes of Montana, 1947:

Every person is entitled to vote at school elections if he has the following qualifications:

(1) He has registered to vote with the county registrar as a **resident in the school district in which he resides** and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in section 75-6413;

(2) He is eighteen (18) years of age or older;

(3) He has been a resident of Montana for at least thirty (30) days; and

(4) He is a citizen of the United States.

No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

No person adjudicated to be of unsound mind has the right to vote unless he has been restored to capacity as provided by law. (Emphasis supplied)

The qualifications of an elector in school elections may be challenged pursuant to section 75-6412:

An elector may challenge the qualifications of another elector under the provisions of section 23-3015. ... Such challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23, R.C.M., 1947.

Any person who shall have been challenged under any of the provisions of this section and who shall swear or affirm falsely before any school election judge shall be guilty of perjury and shall be punished accordingly.

Section 23-3015 provides in pertinent part that an elector's right to vote may be challenged on election day:

(3) An elector's right to vote may also be challenged **on election day by any registered elector** by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) Test the qualifications of the elector challenged under oath if he applies to vote;

(b) Compare the answers of the elector with the entries in the precinct register books;

(c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, **or the elector is disqualified for any cause under the law**, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more electors of the county to be examined under oath as to the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications. (Emphasis supplied)

In addition to the general challenge to the elector's right to vote contained in section 23-3015, *supra*, other specific grounds for challenge are enumerated in section 23-3611, R.C.M. 1947.

The fact that a person's name appears in the election register is *prima facie* evidence of his right to vote. Section 23-3018, R.C.M. 1947. However, this fact is subject to challenge and rebuttal.

According to section 75-6410, *supra*, an elector must be registered "as a resident in the school district in which he resides" in order to be qualified to vote. He may be challenged on election day if he is no longer a resident of that

district, because section 23-3015, supra, allows disqualification of an elector "for any cause under the law", and section 75-6410, supra, clearly makes registration "as a resident in the school district in which he resides" a prerequisite to being a qualified voter.

Residence for election purposes is a fact to be determined according to rules as set forth in section 23-3022, R.C.M. 1947, which provides in pertinent part:

For registration or 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.

(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.** (Emphasis supplied)

THEREFORE, IT IS MY OPINION:

1. An elector in a school election may be challenged on election day by any registered elector of the district.
2. A challenged elector of the school district may be disqualified from voting by the election judges in a school election if he is not a resident of the school district in which the election is held.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General