

VOLUME NO. 37

OPINION NO. 161

CLERKS - Registration of voters, election on annexation of portions of Yellowstone Park; ELECTIONS - Power of the Legislature to prescribe residency requirements for electors; ELECTIONS - Eligible voters, referendum on annexation of portions of Yellowstone Park; ELECTIONS - Nature of the majority required for ratification of annexation of portions of Yellowstone Park; REVISED CODES OF MONTANA, 1947 - Section 23-3011; LAWS OF 1977 - Chapter 447; 1972 MONTANA CONSTITUTION - Article IV, section 2, Article XI, sections 2 and 3.

- HELD: 1. Eligible residents of the portion of the Yellowstone National Park proposed for annexation into Park County under chapter 447, Laws of 1977, must be accorded the opportunity to vote on the question of annexation.
2. A majority vote must be attained both among voters registered in Park County and among voters who reside in the area to be annexed in order to ratify the annexation.

26 September 1978

Jack Yardley, Esq.
Park County Attorney
Park County Courthouse
Livingston, Montana 59047

Dear Mr. Yardley:

Chapter 447, section 3, Laws of 1977, (hereinafter chapter 447) provides for a referendum on the question of the annexation into Park and Gallatin Counties of the portions of Yellowstone National Park lying within the borders of the State of Montana. You have requested my opinion on the following questions:

1. Do the people residing within the area proposed to be annexed have a right to vote on the issue?
2. If they do, would it take a favorable vote of those persons voting in the county and also a favorable vote of those persons living within the area proposed to become a part of the county to ratify the annexation?

The statute in question provides:

The question of whether the boundaries of Gallatin County or Park County shall be changed as provided in (sections 1 and 2 of the Act) shall be placed on the ballot in each of the respective counties. The registrar of each affected county shall designate a place to register and vote for eligible persons located in the areas proposed for inclusion in the county. If approved, by a majority of those voting on the question in the county affected and area proposed for inclusion in that county, the amendments in (sections 1 and 2) become effective upon approval.

The statute seems plain on its face. It provides a referendum on the annexation question, makes special provision for registration of "eligible persons" in the area to be annexed, and requires a majority vote of those voting "in the county affected and the area proposed for inclusion" for ratification. Had the Legislature intended to limit the franchise to voters registered in Park County, it could easily have done so without reference to voters in the area to be included. The references to such voters therefore suggests an intent to extend the franchise.

Further, and more significantly, a construction of chapter 447 which excludes persons residing in the Park from voting renders the entire second sentence of the act meaningless. That sentence requires the registrar in the county affected to "designate a place to register and vote for eligible persons located in the areas proposed for inclusion in the county." Persons whose right to vote in Park County has been established by residency therein already have a place to register and vote. See R.C.M. Title 23, ch. 30. Therefore, the provision of the second sentence only has meaning if chapter 447 as a whole is construed to extend the franchise to persons residing in Yellowstone Park.

A statute should be construed so as to give effect to all its parts if possible, Fletcher v. Paige, 124 Mont. 114, 119, 220 P.2d 484 (1950). The only way to satisfy this rule is to read chapter 447 as granting the franchise to "eligible persons" residing in the portion of Yellowstone Park sought to be annexed.

Article XI, section 2, 1972 Montana Constitution provides that "[n]o county boundary may be changed ... until approved by a majority of those voting on the question in each county

affected." Your letter suggests that since the Constitution refers only to "counties affected," a vote among residents of the Park is not required. However, in my opinion, Article XI, section 2 requires only that a referendum be held in all counties affected before an annexation may take place. It does not tie the Legislature's hands when dealing with annexations in which only one county is affected. The purpose of the constitutional provision is obvious; by requiring an affirmative vote in each county affected, "a large county could not swallow a small county without the latter's permission." Minutes of the Constitutional Convention at 7670 (Remarks of Delegate Anderson). Article XI, section 3(1) explicitly allows the Legislature to provide procedures whereby counties may alter their boundaries. The Constitutional Convention plainly did not intend to prevent the Legislature from enacting legislation under Article XI, section 3(1) to deal with annexations not directly controlled by Article XI, section 2 so long as the residents of all counties affected are consulted by referendum.

The question then arises whether the Legislature may constitutionally extend the franchise to allow residents of Yellowstone Park to vote on the question of annexation. The question of whether such persons possess the qualifications to vote was answered in the negative in a previous opinion of this office reported at 10 OP. ATT'Y GEN. 246. However, the jurisprudential underpinnings of that opinion have been eroded and it is no longer authority for the point.

Attorney General Rankin's holding appears in 10 OP. ATT'Y GEN. at 250:

[I]t appears that residents of Yellowstone National Park, even though they reside on that part of its territory which was ceded to the general government by the State of Montana, are not residents of the State of Montana by virtue of that residence, and unless they have their legal residence at some other place which is within the State of Montana, they would not be entitled to vote in this State. *** [O]nly those mentioned in the constitution as having the right to vote, have that right. One of the qualifications is that the voter shall be a resident of the State of Montana. If these persons living in the park have no residence at some other place within the State of Montana, they are not residents of the State, and it appears from the case of Sinks v. Reese (19

Ohio St. Rptr. 306 (1870)) that after having ceded jurisdiction over the territory ..., it would be constitutionally incompetent for the Legislature to attempt to extend or reserve the right of voting to the residents of the ceded territory.

This reasoning is no longer valid since the qualifications for the franchise are different under the 1972 Constitution than they were under the Constitution in force in 1923. Under the earlier document, an elector was constitutionally required to be at least twenty-one years of age, a citizen of the United States, and a resident of Montana for one year and of his town, county, or precinct for a period of time prescribed by law. Attorney General Rankin felt the Legislature lacked the power to vary a constitutional residency requirement by extending the franchise to persons who were considered to be non-residents under the precedent then extant. Under Montana's 1972 Constitution, however, residency requirements for voting are a matter of legislative discretion. Article IV, section 2 provides that "[a]ny citizen of the United States 18 years of age or older who meets the registration and residency requirements provided by law is a qualified elector..." (emphasis added.) Thus, in extending the franchise to residents of Yellowstone Park for the limited purpose of ratifying the annexation of Park lands into the county, the Legislature is exercising a power explicitly enumerated in the constitution.

Chapter 447 also eliminates certain practical problems pertaining to registration identified in the former Attorney General's opinion. Attorney General Rankin pointed out that state law required registration in the county of residence as a qualification for exercise of the franchise. Since residents of Yellowstone Park were residents of no county in Montana, they were unable to comply with this requirement. 10 OP. ATT'Y GEN. at 251. Chapter 447 explicitly meets this deficiency by allowing "eligible persons" living in Yellowstone Park to register and requiring the county registrar to establish a place where they may do so.

The former Attorney General's opinion is also infirm in that the authorities relied upon there embody a theory of public land law which has long since been discarded by the United States Supreme Court. The former opinion relied heavily on the reasoning of an Ohio court in Sinks v. Reese, 19 Ohio St. Rptr. 306, that a resident of a federal enclave "becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as the State of Indiana, or Kentucky, or the District of Columbia." This reasoning was the basis of the

then commonly-held view that a federal enclave was a separate area divested from the sovereign control of the state, such that its residents necessarily forfeited their state residency. The Supreme Court specifically disapproved the reasoning of Sinks in Evans v. Cornman, 398 U.S. 419 (1970), a case involving an equal protection attack on Maryland's disenfranchisement of residents of a federal enclave established for the National Institute of Health (NIH). The Court found the theory of Sinks to be outmoded in view of the changes in "the relationship between federal enclaves and the States in which they are located." The Court also held the Maryland eligibility requirement to be unconstitutional, stating:

Appellees clearly live within the geographical boundaries of the State of Maryland, and they are treated as state residents in the census and in determining congressional apportionment. They are not residents of Maryland only if the NIH grounds ceased to be a part of Maryland when the enclave was created. However, that "fiction of a state within a state" was specifically rejected by this Court in Howard v. Commissioners of Louisville, 344 U.S. 624, 627 (1953), and it cannot be resurrected here to deny appellees the right to vote.

Id. at 421-22.

As noted above, Evans dealt with an equal protection challenge to the denial of the vote to residents of a federal enclave. Your opinion request does not question the constitutionality of Montana's denial of the franchise to residents of Yellowstone Park, and I therefore express no opinion thereon. However, Evans does establish that the holding in Sinks is no longer good law. It is apparent that the legal and constitutional bases for the prior Attorney General's opinion reported at 10 OP. ATT'Y GEN. 246 will not withstand serious analysis. I therefore overrule that opinion and hold that there is no constitutional impediment to state legislation extending the franchise to "eligible persons" residing in those portions of Yellowstone National Park lying within the borders of the State of Montana.

The term "eligible persons" should be construed in light of the rules established by the State of Montana pursuant to its constitutional power to establish reasonable qualifications for voters. See Pope v. Williams, 193 U.S. 621 (1904).

The requirements are set forth in section 23-2701, R.C.M. 1947.

- (1) No person may be entitled to vote at elections unless he has the following qualifications:
 - (a) He must be registered as required by law;
 - (b) He must be eighteen (18) years of age or older;
 - (c) He must be a resident of the State of Montana and of the county in which he offers to vote for at least thirty (30) days;
 - (d) He must be a citizen of the United States.

* * *

Subdivisions (b) and (d) are constitutionally mandated, and cannot be altered by legislation. See Art. IV, section 2, 1972 Mont. Const. However, chapter 447 works an implicit amendment to the registration and residence requirements. As noted above, the second sentence of chapter 447 removes any legal impediment to registration of voters residing in Yellowstone Park. Further, the impact of chapter 447 as a whole is to permit Park residents to vote on the annexation question, abrogating the in-county residency requirement for this limited purpose. I therefore conclude that an "eligible person" under chapter 447 is one who is a United States citizen, eighteen years of age or older, who has registered under procedures established by the county registrar, and who has resided in the area to be annexed for a period of thirty days. Such residence must be a legal residence for voting purposes. The registrant must establish that the Park is "where his habitation is fixed, ... to which, whenever he is absent, he has the intention of returning." Section 23-3022(1), R.C.M. 1947. To this end, the registrar should require that registrants agree to cancel any prior registrations in the State of Montana or elsewhere. Section 23-3011, R.C.M. 1947.

To summarize, I hold in answer to your first question that "eligible persons" who have established a bona fide residence in the area of Yellowstone Park proposed to be annexed must be permitted to register and vote on the question of annexation under chapter 447, section 3. The act extends the franchise for the limited purpose of ratifying the proposed annexation. Park residents who register under the act may therefore vote only on the referendum, and not on any other ballot issues or electoral races.

Your second question deals with the effect of the third sentence of chapter 447, section 3, which provides: "If approved, by a majority of those voting on the question in the county affected and area proposed for inclusion in that county, the amendments [in sections 1 and 2] become effective upon approval." (Emphasis added.) You inquire whether a majority must be obtained among both constituencies, park and county, to ratify the annexation. I conclude that such majorities must be obtained in order to ratify. I base my conclusion on a reading of the statute in light of the rule of Fletcher v. Paige, supra, that a statute should be construed so that no part of it is rendered meaningless. The Legislature has on other occasions used the phrase "a majority of those voting on the question" to express an intent that a simple majority vote be sufficient to approve a ballot issue. See, e.g., section 37-136(2), R.C.M. 1947. This phrase appears in chapter 447. If, as you suggest, only a simple majority of those voting were required to approve the referendum, the phrase, "in the county affected and the area proposed for inclusion" would be surplusage. My conclusion is further supported by analogy to the Montana Constitution, Article XI, section 2 which requires the approval of the voters of all counties affected to ratify a change in county boundaries. The plain intent of this provision is to prevent the annexation of a county against its will. The Legislature might well have analogized the constitutional provision to the present circumstance by providing that residents of Yellowstone Park not be subject to annexation into Park County without their approval.

THEREFORE, IT IS MY OPINION:

1. Eligible residents of the portion of Yellowstone National Park proposed for annexation into Park County under chapter 447, Laws of 1977, must be accorded the opportunity to vote on the question of annexation.
2. A majority vote must be attained both among voters registered in Park County and among voters who reside in the area to be annexed in order to ratify the annexation.

Very truly yours,

MIKE GREELY
Attorney General