

MUNICIPAL GOVERNMENT - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;
PUBLIC OFFICERS - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;
RESIDENCE - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;
URBAN RENEWAL - Disqualification of member on local urban renewal agency board of commissioners following change of residency outside municipality;
MONTANA CODE ANNOTATED - Sections 2-16-501, 7-4-4101, 7-4-4105, 7-4-4106, 7-4-4111, 7-15-4232 to 7-15-4234, 7-15-4236.

HELD: A condition of both appointment to and continued service on a local urban renewal agency board of commissioners is residency within the municipality which created the board under the Urban Renewal Act.

8 January 1985

Jim Nugent
Missoula City Attorney
201 West Spruce Street
Missoula MT 59801

Dear Mr. Nugent:

You have requested my opinion concerning the following question:

Must a member of the board of commissioners of an urban renewal agency who is required, pursuant to section 7-15-4234(5), MCA, to be a city resident at the time of appointment to the board continue to be a city resident during the term of his appointment to the board?

You suggest that section 7-4-4111(7), MCA, controls this matter and that, if a member of the Missoula Urban Renewal Agency Board of Commissioners establishes his residency outside the municipality, he is automatically

removed from office. I agree with your conclusion but base my holding on section 2-16-501(5), MCA, and not section 7-4-4111(7), MCA.

The Urban Renewal Act, §§ 7-15-4201 to 4293, MCA, authorizes municipalities to create urban renewal agencies for the purpose of formulating and administering urban renewal plans. §§ 7-15-4232(2), 7-15-4233, MCA. If an urban renewal agency is created, a five-member board of commissioners must be appointed by the municipality's mayor with the advice and consent of the city council or other local governing body; once appointed, the board is responsible for exercising the powers and duties of the agency. §§ 7-15-4234(1), 7-15-4236, MCA. Section 7-15-4234(5), MCA, provides that "[a]ny persons may be appointed as commissioners if they reside within the municipality," while section 7-15-4234(6), MCA, states that "[a] commissioner may be removed for inefficiency, neglect of duty, or misconduct in office." No provision in the Urban Renewal Act specifically addresses the question of whether a commissioner becomes disqualified from membership on the board if, during his term, he moves his residence outside the municipality.

Sections 7-4-4101 to 4114, MCA, contain general provisions relating to municipal officers. Offices in first class cities, such as Missoula, consist of several specified positions, but "any other officers necessary to carry out the provisions of this title" may be appointed. § 7-4-4101(3)(i), MCA. The city council is given authority to prescribe by ordinance the duties of all municipal officers, to fix their compensation, and to abolish or consolidate any appointed offices except that of city judge. §§ 7-4-4101(4), 7-4-4105, 7-4-4106, MCA. Section 7-4-4111(7), MCA, states that a vacancy will occur in a municipal office upon an officer's "ceasing to be a resident of the city or town or, in the case of an alderman, his ceasing to be a resident of his ward."

Although the terms "office" or "officer" as used throughout sections 7-4-4101 to 4114, MCA, may arguably be construed as applying to any officer appointed by a municipality's mayor with concurrence of the city or town council, a construction limiting those provisions' application to officers specified in section 7-4-4101(1), MCA, or officers appointed solely pursuant

to authority contained in section 7-4-4101(3), MCA, is also possible. Such a limiting application would conceivably exclude from coverage members of urban renewal agency boards of commissioners, whose conditions of appointment and responsibilities are set forth in detailed statutory provisions independent of sections 7-4-4101 to 4114, MCA.

While the scope of sections 7-4-4101 to 4114, MCA, is questionable, section 2-16-501, MCA, does clearly apply here. It provides:

An office becomes vacant on the happening of any one of the following events before expiration of the term of the incumbent:

....

(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town or township for which he was chosen or appointed or within which the duties of his office are required to be discharged[.]

Section 2-16-501, MCA, has been applied to state, county and municipal offices, and the specific language of subparagraph (5) reflects such broad coverage. See, e.g., State ex rel. Koch v. Lexcen, 131 Mont. 161, 308 P.2d 974 (1957) (county attorney); State ex rel. Anderson v. Fousek, 91 Mont. 448, 8 P.2d 791 (1932) (city police officer); State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914) (city alderman); State ex rel. Jones v. Foster, 39 Mont. 583, 104 P. 860 (1909) (district court clerk). The term "office," as used in section 2-16-501, MCA, is not defined but undoubtedly includes positions on local urban renewal agency boards of commissioners. See, generally, State ex rel. Running v. Jacobson, 140 Mont. 221, 224-25, 370 P.2d 483, 485 (1962).

THEREFORE, IT IS MY OPINION:

A condition of both appointment to and continued service on a local urban renewal agency board of commissioners is residency within the municipality which created the board under the Urban Renewal Act.

Very truly yours,

MIKE GREELY
Attorney General