

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 4

JUSTICES OF THE PEACE - Qualifications of temporary substitute justices;  
MONTANA CODE ANNOTATED - Sections 3-10-202, 3-10-231(2).

HELD: In order to be eligible for the list of persons provided by a justice of the peace as temporary substitute justices, persons must meet the qualifications set forth in section 3-10-202(2), MCA.

28 January 1987

Margaret A. Tonon  
Deputy County Attorney  
Ravalli County Courthouse  
Hamilton MT 59840

Dear Ms. Tonon:

You have requested my opinion concerning the following question:

What are the qualifications needed in order to be eligible for the list of persons provided by a justice of the peace as temporary substitute justices pursuant to section 3-10-231(2), MCA?

Section 3-10-231(2), MCA, provides as follows:

Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in his place during a temporary absence when no other justice or city judge is available. The county commissioners shall administer the oath of office to each person on this list within

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the ensuing 30 days or as soon thereafter as possible.

Your question, as you have explained it to me, is whether the phrase, "a list of persons who are qualified to hold court" used in section 3-10-231(2), MCA, means that the persons eligible for the list are subject to section 3-10-202, MCA, which sets forth the qualifications for elected or appointed justices of the peace. That statute states in pertinent part:

Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana;

(b) a person who has held the office of justice of the peace within the preceding 5 years; or

(c) a person who has completed the orientation course of study held under the direction of the university of Montana law school. If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him.

§ 3-10-202(2), MCA. Your question arises because section 3-10-231(2), MCA, is a recent enactment, having been added to the existing statute by legislative amendment in 1985.

Since matters of judicial selection and qualifications are questions of state law, we must look to evidence of what the Legislature intended with its 1985 amendment. City of Missoula v. Shea, 202 Mont. 286, 298, 661 P.2d 410, 416 (1983); Stewart v. Bird, 100 Cal. App. 3d 215, 160 Cal. Rptr. 660 (1979); State v. George, 250 Ark. 968, 470 S.W.2d 593 (1971); People's National Bank v. Manos Brothers Inc., 226 S.C. 257, 84 S.E.2d 857 (1954). Because section 3-10-231(2), MCA, refers to "a list of persons who are qualified" and section 3-10-202, MCA, refers specifically to qualifications for justices of the peace, the intent appears clear.

In construing the meaning of a statute, the intent of the framers, i.e., the legislature, is paramount. Section 93-401-16, R.C.M.1947. In determining legislative intent, resort must first be made to the plain meaning of the

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words used. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660, and Montana cases cited therein.

State ex rel. Cashmore v. Anderson, 160 Mont. 175, 184, 500 P.2d 921, 926 (1972).

The legislative history of this amendment (especially Exhibit G from the Senate Local Government Committee minutes of March 7, 1985) also shows clearly that it was the legislators' understanding and intent that the "qualified persons" spoken of in section 3-10-231(2), MCA, be subject to the qualifications listed in section 3-10-202, MCA. In addition, to be eligible for the list referred to in section 3-10-231(2), MCA, a person would have to meet the residency requirements of section 3-10-204, MCA.

THEREFORE, IT IS MY OPINION:

In order to be eligible for the list of persons provided by a justice of the peace as temporary substitute justices, persons must meet the qualifications set forth in section 3-10-202(2), MCA.

Very truly yours,

MIKE GREELY  
Attorney General