

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 47

ELECTIONS - Voter qualifications for irrigation districts; weighted voting not violative of "one man, one vote";

IRRIGATION DISTRICTS - Voter qualifications for irrigation districts; weighted voting not violative of "one man, one vote";

MONTANA CODE ANNOTATED - Title 85, chapter 7; sections 13-1-111, 85-7-1710;

MONTANA CONSTITUTION - Article IV, section 2.

HELD: 1. In order to vote in an irrigation district election under Title 85, chapter 7, part 17, MCA, an individual must be: (1) a landowner

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in the irrigation district; (2) a citizen of the United States; (3) 18 years of age or older; and (4) a resident of the State of Montana and the county in which he offers to vote for at least 30 days.

2. The voting procedure in Title 85, chapter 7, MCA, which awards one vote for every forty (40) acres of land or major fraction thereof, is not in violation of the "one man, one vote" requirement of the United States Constitution.

24 December 1987

Edwin V. Swanson, Chairman  
Valley County Board  
of Commissioners  
P.O. Box 311  
Glasgow MT 59230

Dear Mr. Swanson:

I have condensed your inquiry into the following two questions:

1. What are the qualifications for a person to vote in an irrigation district election held pursuant to section 85-7-1710, MCA?
2. Is section 85-7-1710(2), MCA, which allows one vote for every 40 acres or major fraction thereof, violative of the "one man, one vote" decisions of the United States Supreme Court?

I will first address the issue of weighted voting. As you note, Montana law provides that in irrigation district elections, landholders receive one vote for every 40 acres of land or major fraction thereof which they own. § 85-7-1710(2), MCA. In the case of Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973), the United States Supreme Court considered a similar question. The claimants in that case charged that a provision in the California irrigation district law which apportioned votes according to the assessed valuation of the land in the district created an invidious discrimination against them. The Court rejected this argument. In upholding the weighted voting scheme, the Court found that where the tax burden fell unequally according to the size of

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the land holdings, it was not unreasonable for the votes to be weighted according to the size of the land holdings. Id. at 734.

In reaffirming its decision in Salyer while scrutinizing a similar voting arrangement in Arizona, the United States Supreme Court said:

As in the Salyer case, we conclude that the voting scheme for the District [one vote per acre of land] is constitutional because it bears a reasonable relationship to its statutory objectives. ... Arizona could rationally make the weight of their vote dependent upon the number of acres they own, since that number reasonably reflects the relative risks they incurred as landowners and the distribution of the benefits and the burdens of the Districts' water operations.

Ball v. James, 451 U.S. 355 at 371 (1981).

By reason of these United States Supreme Court opinions upholding similar voting schemes in irrigation district elections, it is clear that Montana's weighting of votes according to the size of land holdings in irrigation district elections does not violate the "one man, one vote" requirement of the United States Constitution.

Your other question concerns the qualifications of voters in an irrigation district election. Section 85-7-1710, MCA, restricts the voting right in irrigation districts to landowners. The following individual landowners, in the words of the statute, are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that no registration of electors may be required[.]

§ 85-7-1710(1), MCA. The voting qualifications for individuals in subsection (a) are those specified in the Constitution and general election laws. The Constitution, in article IV, section 2, provides that a qualified elector must be at least 18 years of age and a citizen of the United States. The elector must also meet the registration and residency requirements established by law.

Section 13-1-111, MCA, is the section in the general election laws which establishes the qualifications for voting. The affirmative requirements, with the

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exception of registration, are, in the words of the statute:

(b) He must be 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 30 days.

(d) He must be a citizen of the United States.

§ 13-1-111, MCA. The rules for determining residence are set forth in section 13-1-112, MCA, and it is not necessary to repeat them here. They would, however, be applicable in determining whether an individual qualifies as a resident of the state and county as required in section 13-1-111(c), MCA. As quoted earlier, section 85-7-1710(1)(a), MCA, waives any registration of electors for irrigation district elections.

THEREFORE, IT IS MY OPINION:

1. In order to vote in an irrigation district election under Title 85, chapter 7, part 17, MCA, an individual must be: (1) a landowner in the irrigation district; (2) a citizen of the United States; (3) 18 years of age or older; and (4) a resident of the State of Montana and the county in which he offers to vote for at least 30 days.
2. The voting procedure in Title 85, chapter 7, MCA, which awards one vote for every forty (40) acres of land or major fraction thereof, is not in violation of the "one man, one vote" requirement of the United States Constitution.

Very truly yours,

MIKE GREELY  
Attorney General