

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 67

COUNTIES - Clerk and recorder may not require proof of residence prior to registering voters;  
COUNTY OFFICERS AND EMPLOYEES - Clerk and recorder may not require proof of residence prior to registering voters;  
ELECTIONS - Clerk and recorder may not require proof of residence prior to registering voters;  
RESIDENCE - Clerk and recorder may not require proof of residence prior to registering voters;  
MONTANA CODE ANNOTATED - Sections 13-1-111, 13-2-202, 13-2-203;  
MONTANA CONSTITUTION - Article II, section 13.

HELD: A county clerk and recorder may not request proof of residence of those intending to register to vote.

18 February 1988

Wm. Nels Swandal  
Park County Attorney  
Park County Courthouse  
Livingston MT 59047

Dear Mr. Swandal:

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You have asked my opinion as to whether the county clerk and recorder may require proof of the information called for in the registration form to prove residence for voting purposes.

Section 13-2-202, MCA, sets out the procedure for registration by personal appearance. It provides:

An elector may register by appearing before the registrar or a deputy registrar and:

- (1) answering any questions asked by the official concerning items of information called for in the registration form;
- (2) signing and verifying or affirming the affidavit or affidavits on the form. [Emphasis supplied.]

Section 13-2-203, MCA, sets out the procedure for registration by mail. This section contains two subsections which are pertinent to this request:

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information shall be distributed with the mail registration form.

(3) The elector shall complete, sign, and ... either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on the registration form.

Section 13-1-111, MCA, sets forth the qualifications which must be met before an individual may vote, and which are, for all practical purposes, the foundational questions for the information required in the registration form referred to in section 13-2-202, MCA.

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(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 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.

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

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

§ 13-1-111, MCA.

Under section 13-2-202, MCA, an elector wishing to register is charged with the responsibility of answering any questions asked by the registrar concerning the items called for in section 13-1-111, MCA, including questions about residence. The statute makes no allusion to the requirement of proof. It only requires that the elector answer questions.

Montana's basic rule on statutory construction is applicable here. Section 1-2-101, MCA, provides that "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."

The language of section 13-2-202(1), MCA, requires the elector to answer any questions. There is no provision in the statute permitting the registrar to require proof to support the elector's response. To insert this requirement into the statute would be to directly contravert the basic rule of statutory construction set out above.

A significant principle of election law is that registration laws should be construed to give electors the fullest opportunity to vote that is consistent with reasonable precaution against fraud at the polls. 29

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C.J.S. Elections § 37. City of Coronado v. San Diego Unified Port District, 38 Cal. Rptr. 834, 227 C.A.2d 455, appeal dismissed, 380 U.S. 125 (1965). No law should be so strictly construed as to prohibit from voting those otherwise qualified to exercise the privilege. In re Interrogatories of the United States District Court Pursuant to Rule 21.1, 642 P.2d 496 (Colo. 1982). Both by constitutional design and legislative dictate, courts must construe election and suffrage statutes in a manner which results in the registration of all legally qualified voters. Meyer v. Putnam, 526 P.2d 139 (Colo. 1974).

Montana's Constitution provides that "[a]ll elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mont. Const. art. II, § 13. The Montana Supreme Court has adopted the following rule of statutory construction relating to this right:

Statutes regulating the rights of citizens to vote are of great public interest and, therefore, are interpreted with a view to securing for citizens their right to vote ....

Keller v. Smith, 553 P.2d 1002, 1008, 170 Mont. 399, 408 (1976).

Montana's Constitution, case law, and basic rules of statutory construction, as well as the case law of other states, clearly establish that registration rules should be construed to permit the greatest number of qualified voters to exercise their rights. My holding that a county clerk and recorder may not require proof of residence of those intending to register to vote is consistent with that principle. Concerns regarding fraud may be addressed through other channels, principally the challenge procedures contained in sections 13-2-403, 13-2-404, and 13-13-301 to 311, MCA. These statutes permit the registration or vote of an elector to be challenged if the challenger has knowledge that the elector does not reside at the address where registered, or that other voter qualifications are not met.

THEREFORE, IT IS MY OPINION:

A county clerk and recorder may not request proof of residence of those intending to register to vote.

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Very truly yours,

MIKE GREELY  
Attorney General