

VOLUME NO. 43

OPINION NO. 24

ELECTIONS - Registration requirements of electors nominating candidates for school trustee under 20-3-305(2);

SCHOOL BOARDS - Registration requirements of electors nominating candidates for school trustee under 20-3-305(2);

MONTANA CODE ANNOTATED - Sections 13-1-101(6), 13-1-111, 20-3-305, 20-3-305(2), 20-20-301.

HELD: An elector nominating a candidate for a school trustee position under section 20-3-305(2), MCA, must be registered to vote at the time the nominating petition is filed.

July 19, 1989

John C. McKeon
Phillips County Attorney
Phillips County Courthouse
Malta MT 59538

Dear Mr. McKeon:

You have requested my opinion on the following issue:

Must the electors nominating a candidate for a school trustee position under section 20-3-305(2), MCA, be registered to vote at the time the nominating petition is filed?

You explain in your request that the clerk of one of the school districts in Phillips County received a petition signed by five individuals nominating another individual as a candidate for the board of trustees for that district. The petition was filed more than 40 days before the election, as required by section 20-3-305(2), MCA, but one of the five individuals was not registered as an elector on the date the petition was filed. You note that although the nominator was not registered to vote at the time of the nomination, he did in fact register to vote before the election. The issue is whether the unregistered

nominator could be counted to satisfy the requirements of section 20-3-305(2), MCA.

Section 20-3-305, MCA, states:

Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 shall be eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. [Emphasis supplied.]

Section 20-20-301, MCA, states, in pertinent part:

Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district[.] [Emphasis supplied.]

In turn, section 13-1-111, MCA, provides, in pertinent part:

Qualifications of voter. (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.

An elector is defined as "an individual qualified and registered to vote under state law." § 13-1-101(6), MCA. (Emphasis added.)

The plain meaning of these statutes indicates that a nominator must be registered before the filing of a nominating petition. Section 20-3-305(2), MCA, states that any five electors qualified under section 20-20-301, MCA, may nominate. Section 20-20-301, MCA, states that an elector is entitled to vote if he meets the qualifications of section 13-1-111, MCA. Section 13-1-111, MCA, in turn, states that a person must be registered before he can vote. Read together, as required, these statutes suggest no other conclusion. The statutes do not speak in terms of eligibility to register, but in terms of

electors, who by definition have already registered. One cannot be an elector under section 13-1-101(6), MCA, unless one is registered to vote.

THEREFORE, IT IS MY OPINION:

An elector nominating a candidate for a school trustee position under section 20-3-305(2), MCA, must be registered to vote at the time the nominating petition is filed.

Sincerely,

MARC RACICOT
Attorney General