

VOLUME NO. 43

OPINION NO. 30

ELECTIONS - United States Senate election as statewide race for purposes of section 13-10-601(1), MCA;

OFFICES - United States Senate election as statewide race for purposes of section 13-10-601(1), MCA;

MONTANA CODE ANNOTATED - Sections 13-1-103(15), 13-10-601(1).

HELD: The phrase "statewide office" as used in section 13-10-601(1), MCA, the statute that provides for automatic qualification to hold a primary election, means an office for which a statewide election is held, including the office of United States Senator. Thus, because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, a political party must have a candidate for United States Senator receive the requisite number of votes in the 1990 election in order to automatically qualify to nominate candidates by primary election in 1992.

August 29, 1989

The Honorable Mike Cooney
Secretary of State
Room 225, State Capitol
Helena, MT 59620

Dear Mr. Cooney:

You have requested my opinion on the following issue:

Must a political party have a candidate participate in the 1990 United States senatorial race in Montana in order to remain qualified for ballot status in the 1992 election?

Section 13-10-601, MCA, provides political parties two methods for qualifying to nominate candidates by primary election. Qualification is automatic under subsection (1) if the party has received significant support in the past. Subsection (2) permits a minor party to qualify for holding a primary if a petition signed by the requisite number of voters is filed. Your question concerns the automatic qualification provided for in subsection (1), which states:

Every political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor at the last general election shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

Because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, the question becomes whether a United States Senate seat falls within the definition of "statewide office" as that phrase is used in section 13-10-601(1), MCA.

Montana has no case law concerning this issue and the legislative history of section 13-10-601(1), MCA, does not elaborate on the term "statewide." Although the phrase "public office" is defined in the Montana Code, "statewide office" is not. Section 13-1-103(15), MCA, states that "public office" means a state, county, municipal, school, or other district office that is filled by the people at an election. The fact that section 13-10-601(1), MCA, uses the phrase "statewide office" rather than "public office" or "state office" suggests that the Legislature did not expressly intend to restrict ballot qualification to elected officials in the state system.

A reasonable interpretation of "statewide office" is an office for which a statewide election is held. United States Senators are elected by the voters of the entire state to represent the state in the federal system. A 1948 Maryland decision, Vaughn v. Boone, 62 A.2d 351 (Md. 1948), recognized this distinction in its discussion of presidential electors nominated by their parties. The Maryland Court ruled that the phrase "statewide office" embraced "all offices to be filled by voters of the entire state." *Id.* at 353.

THEREFORE, IT IS MY OPINION:

The phrase "statewide office" as used in section 13-10-601(1), MCA, the statute that provides for automatic qualification to hold a primary election, means an office for which a statewide election is held, including the office of United States Senator. Thus, because the only election decided by a statewide vote in 1990 is for a seat in the United States Senate, a political party must have a candidate for United States Senator receive the requisite number of votes in the 1990 election in order to automatically qualify to nominate candidates by primary election in 1992.

Sincerely,

MARC RACICOT
Attorney General