

VOLUME NO. 43

OPINION NO. 9

PROPERTY, REAL - Residency requirement for professional land surveyors;  
RESIDENCE - Residency requirement for professional land surveyors;  
SURVEYORS - Residency requirement for professional land surveyors;  
ADMINISTRATIVE RULES OF MONTANA - Section 8.48.1102;  
MONTANA CODE ANNOTATED - Sections 37-67-308, 37-67-309,  
37-67-319(2).

HELD: A professional land surveyor registered in the state of Montana need not be a resident of Montana when signing off on certificates of survey.

April 19, 1989

Thomas R. Scott  
Beaverhead County Attorney  
2 South Pacific, CL #2  
Dillon MT 59725-2713

Dear Mr. Scott:

You have requested my opinion on the following question:

Must a professional land surveyor registered in the state of Montana be a resident of Montana when signing off on certificates of survey?

The qualifications of an applicant for registration as a professional land surveyor are set forth in sections 37-67-308 and 37-67-309, MCA. They include satisfactory personal references, a specified combination of education and experience, and satisfactory passage of required examinations. Residency is not a qualification of an applicant for registration as a professional land surveyor in the state of Montana.

On the other hand, as your letter states, there is statutory language which implies that residency is a matter to be considered in land surveying matters, i.e., section 37-67-319(2), MCA. The administrative rules of the Board of

Professional Engineers and Land Surveyors (§ 8.48.1102, ARM) also mention residency. However, for the following reasons, I do not find these references dispositive.

Section 37-67-319(2), MCA, provides:

The practice of land surveying under a temporary permit by a person registered as a professional land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

§ 37-67-319(2), MCA. This statute clearly applies to nonresident professional land surveyors who are not registered in Montana. It does not apply to the requirements for registration in Montana. That subject is covered by sections 37-67-308 and 37-67-309, MCA, which make no mention of residency requirements.

With respect to section 8.48.1102, ARM, the statutory requirements for registration in Montana as a professional land surveyor cannot be modified by administrative rule. Michaels v. Department of Social and Rehabilitation Services, 187 Mont. 173, 178, 609 P.2d 271, 273 (1980). The Board of Professional Engineers and Land Surveyors also informs me that the use of "resident" in such rules as section 8.48.1102, ARM, is inadvertent, and that the Board does in fact keep a number of nonresidents who have properly qualified for registration in Montana as professional land surveyors on its roster of licensees.

Finally, I find nothing in the statutes or regulations governing professional land surveyors which requires that a registered surveyor be a Montana resident when he signs a certificate of survey.

THEREFORE, IT IS MY OPINION:

A professional land surveyor registered in the state of Montana need not be a resident of Montana when signing off on certificates of survey.

Sincerely,

MARC RACICOT  
Attorney General