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VOLUME NO. 46

OPINION NO. 11

CITY JUDGES - Enactment of ordinance requiring elected city judge to be resident of city;
COURTS, CITY - Enactment of ordinance requiring elected city judge to be resident of city;
ELECTIONS - Enactment of ordinance requiring elected city judge to be resident of city;
JUDGES - Enactment of ordinance requiring elected city judge to be resident of city;
RESIDENCE - Enactment of ordinance requiring elected city judge to be resident of city;
MONTANA CODE ANNOTATED - Sections 1-2-101, 2-16-501, 3-10-202, 3-11-202(1), 7-4-4102(3);
MONTANA CONSTITUTION - Article VII, sections 1, 9;
MONTANA LAWS OF 1989 - Chapter 300.

HELD: A Montana city that elects its city judge may enact an ordinance requiring that the judge be a resident of the city.

December 28, 1995

Mr. Eric F. Kaplan
City Attorney
P.O. Box 329
Columbia Falls, MT 59912

Dear Mr. Kaplan:

Your predecessor requested my opinion on the following question:

May a city enact an ordinance requiring that its elected city judge be a resident of the city?

The city of Columbia Falls is a city of the third class that is considering going to a system of electing rather than appointing its city judge, pursuant to Mont. Code Ann. § 7-4-4102(3). Also under consideration is an additional requirement that the city judge be a resident of the city.

The office of city judge, and the qualifications for it, including residency, are creatures of statute. Mont. Const. art. VII, §§ 1, 9. The particular statute enumerating the qualifications for the office of city judge says in pertinent part:

(1) A city judge, at the time of election or appointment, shall:

(a) meet the qualifications of a justice of the peace under 3-10-202;

(b) be a resident of the county in which the city or town is located; and

(c) satisfy any additional qualifications prescribed by ordinance.

Mont. Code Ann. § 3-11-202. The only question at this point is whether a city may proceed under subsection (1)(c) to prescribe an ordinance that is more restrictive than the residence requirement set forth in subsection (1)(b). I find nothing in the statute that would prohibit a city's governing body from doing so.

The argument could be made that in enacting the county residence requirement of subsection (1)(b), the legislature sought to preempt any more restrictive local residence restrictions, because the subsection authorizing the imposition of "any additional qualifications prescribed by ordinance," subsection (1)(c), predates subsection (1)(b). However, I do not subscribe to this interpretation because the two subsections do not conflict; they supplement one another, and statutes should be construed so as to give effect to all of them. Mont. Code Ann. § 1-2-101; Gibson v. State Fund, 255 Mont. 393, 396, 842 P.2d 338, 340 (1992). Subsection (1)(b) sets a statewide minimum residence requirement for city judges, and subsection (1)(c) authorizes cities to enact additional qualifications for their city judges if they so choose. A local residence requirement less restrictive than the statewide requirement would conflict and thus be nugatory, and one more restrictive would be a permissible supplement. Also, subsection (1)(b) was enacted for the purpose of ensuring that local justices of the peace could also serve as city judges within their counties of residence (1989 Mont. Laws, ch. 300; Mins., House Comm. on Judiciary, Hr'g on H.B. 201, Jan. 27, 1989, at 1, 2; Mins., Senate Comm. on Local Gov't, Hr'g on H.B. 201, Feb. 16, 1989, at 6, 7). This is entirely different from the apparent purpose of subsection (1)(c): to permit city governing bodies to establish additional qualifications for city judges. Finally, the legislature left no indication that it saw any conflict between the two subsections, or that it intended the enactment of subsection (1)(b) to restrict the authority of cities to enact additional residence qualifications. In sum, the wording of the two statutes, as well as the legislative history of the statute,

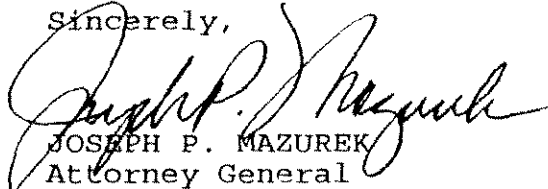
shows that the county residence requirement was not intended to be exclusive. In fact, there is statutory support for the argument that a city judge ought to reside within the city, Mont. Code Ann. §§ 2-16-501, 7-4-4111.

The objection might also be made that a city residence requirement constitutes a denial of equal protection and is, thus, unconstitutional. McQuillin, Municipal Corporations § 12.59.05. While I generally decline to offer my opinion on constitutional questions, city governments contemplating residency limitations should consider that if challenged on equal protection grounds, "the [residency] requirement need only be shown to have a rational relationship to a legitimate government purpose in order to pass constitutional muster." McQuillin, Municipal Corporations § 12.59.10 at 314.

THEREFORE, IT IS MY OPINION:

A Montana city that elects its city judge may enact an ordinance requiring that the judge be a resident of the city.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/kaa