

COUNTIES - Criteria for redrawing commissioner districts;  
COUNTIES - Redrawing commissioner districts following each federal decennial census;  
COUNTY COMMISSIONERS - Residency requirements of candidates;  
STATUTORY CONSTRUCTION - Plain language of statute;  
MONTANA CODE ANNOTATED - Sections 1-4-101, 7-4-2102, -2104;  
MONTANA CONSTITUTION - Article V, section 4;  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 44 (1986).

HELD: The two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2) does not disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102, as long as the person has resided at the same address, now in the new district, for the requisite two-year period.

January 28, 2002

Mr. Brant S. Light  
Cascade County Attorney  
121 Fourth Street North  
Great Falls, MT 59401

Dear Mr. Light:

Your letter indicates that the Board of Commissioners of Cascade County has mandated that an advisory committee redraw the county commission districts in accordance with Mont. Code Ann. § 7-4-2102. You indicate that the advisory committee will recommend that the district lines be redrawn. As a result of this proposed reapportionment, you have requested my opinion concerning the following issue:

Does the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2) disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102?

Montana law requires that all boards of county commissioners in the state divide their respective counties into three commissioner districts following each federal decennial census. Mont. Code Ann. § 7-4-2102(1). The three districts must be "as compact and equal in population and area as possible." Id. The law further provides that no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. Id.

The law as drafted is straightforward in requiring persons to reside in their commissioner district for at least two years before the election:

A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years preceding the general election.

Mont. Code Ann. § 7-4-2102(2). The law fails to address, however, the situation of a person seeking to run for election as a new candidate or to stand for reelection, whose district has changed as a result of mandated redistricting.

In Barthelmess v. Bergerson, 218 Mont. 398, 708 P.2d 1010 (1985), the court faced the question, among others, of whether Mont. Code Ann. § 7-4-2104(2) prevents a sitting board member who was moved out of a commissioner district by reapportionment from running for the board in the board member's former commissioner district. Plaintiff Barthelmess originally resided in Custer County commissioner district number 2. Barthelmess, 218 Mont. at 400. The redistricting undertaken by the Board of County Commissioners for Custer County in 1983, however, moved Mr. Barthelmess's residence into commissioner district number 3. Id. Despite this change, Mr. Barthelmess ran and was elected in 1984 to serve as commissioner for his former district--district number 2. Id.

After the election, a voter challenged Mr. Barthelmess's qualification to serve on the board as the commissioner for district number 2 on the ground that Mr. Barthelmess no longer resided in the district. Id. The court found the language of Mont. Code Ann. § 7-4-2104(2) regarding the two-year residency requirement to be "clear and unambiguous." Barthelmess, 218 Mont. at 403. As Mr. Barthelmess did not reside in the commissioner district from which he ran and was elected, he could not serve based on the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2). Cf. Mont. Const. art. V, § 4 (requiring a candidate for the Montana legislature to be a resident for six months before the general election of the county if it contains one or more districts or of the district if it contains all or parts of more than one county).

Although similar reasoning applies to your question, a different outcome results. Mont. Code Ann. § 7-4-2104(2) requires a person to reside in the commissioner district for two years preceding the election. In Barthelmess, Mr. Barthelmess lived at his same address during the entire period in question. Barthelmess, 218 Mont. at 400. He ran as a candidate in his former commissioner district despite the fact that he no longer resided in that commissioner district. Id. Mr. Barthelmess could not satisfy the two-year residency requirement of Mont. Code Ann. § 7-4-2104(2), due to the fact that he no longer

resided in the commissioner district to which he was elected. The Court never addressed the issue of whether Mr. Barthelmess could have been a candidate from his newly drawn commissioner district--district 3.

As I understand your question, the person at issue also has lived at the same address for some period. Your question asks, however, whether the person would be eligible to run for election in the newly drawn district--the district in which he now resides. The fact that redistricting following the federal decennial census created the district, and the fact that the person has resided at the same address for at least two years leads me to conclude that he satisfies the two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2).

To hold otherwise would lead to the situation of a person being ineligible to be a candidate in any commissioner district for up to two years following the redistricting, despite the fact that the person may have resided at the same address for many years. My conclusion in 41 Op. Att'y Gen. No. 44 (1986) (holding that county adopting charter form of government may allow for incumbent county commissioners to retain their seats even if the new plan alters the district boundaries to the point that the "holdover" commissioners no longer reside in the district that they represent) is not in conflict.

THEREFORE, IT IS MY OPINION:

The two-year residency requirement contained in Mont. Code Ann. § 7-4-2104(2) does not disqualify from standing for election a person who was transferred into a county commission district by virtue of reapportionment conducted pursuant to Mont. Code Ann. § 7-4-2102, as long as the person has resided at the same address, now in the new district, for the requisite two-year period.

Very truly yours,



MIKE McGRATH  
Attorney General

mm/bm/dm