

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2016-030

**TO:** Mayor John Engen; City Council; Dale Bickell; Steve Johnson; Ginny Merriam; Leigh Griffing; Human Resources Department; City Clerk Department.

**CC:** Attorney Department

**FROM:** Jim Nugent, City Attorney

**DATE** December 20, 2016

**RE:** Qualifications to be a City Council member

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### **FACTS:**

City Council member Harlan Wells has announced that he is resigning his City Council position. City Council member Harlan Wells was elected to the City Council in November 2015.

### **ISSUE:**

Pursuant to Montana State law, what qualifications are required to be a Montana municipal city council member?

### **CONCLUSION:**

Pursuant to Montana law, in order to be eligible to serve as a city council member an individual must be at least 18 years old, be a resident of the city council ward, be a qualified elector registered to vote, reside in the city council ward at least 60 days preceding the election or appointment, and be a citizen of both the United States and the state of Montana.

### **LEGAL DISCUSSION:**

Section 7-1-114 MCA entitled “Mandatory Provisions” pertains to local governments with self-government powers. Subsection 7-1-114(1)(d) MCA specifically provides that all Montana local government self-governments are subject to “(d) all laws regulating the election of local officials”. Several provisions of Montana State law establish qualifications for an individual to be eligible to serve as a city council member in municipal government in Montana. Basically in order to be eligible to serve as a municipal city council member pursuant to Montana State law, the person must be a qualified elector registered to vote who is at least eighteen (18) years of age, a resident of the city council ward for at least sixty (60) days and, prior to being elected/selected/appointed, be a citizen of both the United States and Montana. Also, the

Missoula City Charter, pursuant to ARTICLE II § 5, requires that a City Council member be a registered voter who is a resident of the city eligible to hold city office.

Montana's Constitution Art. IV § 2 defines *qualified elector*.

**Section 2. Qualified elector.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Montana municipal government law defines "elector" as meaning "a resident of the municipality qualified and registered to vote under state law." See subsection 7-1-4121 (3), MCA. Montana municipal special improvement district law defines a *qualified elector* as "registered electors of the municipality." Mont. Code Ann. § 7-12-4243(1)(b).

Montana's Constitution Art IV § 4 provides in its entirety:

**Section 4. Eligibility for public office.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Mont. Code Ann. § 7-4-4104 sets forth the general qualifications for municipal office.

**7-4-4104. General qualifications for municipal office.** No person is eligible to any municipal office, elective or appointive:

- (1) who is not a citizen of the United States; and
- (2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town. (Emphasis added.)

Mont. Code Ann. § 2-16-102(2) pertains to general qualifications for office.

**2-16-102. Qualifications generally -- age and citizenship.**

...

- (2) A person is not eligible to hold civil office in this state who at the time of election or appointment is not 18 years of age or older and a citizen of this state. (Emphasis added)

Mont. Code Ann. § 7-4-4401 sets forth qualifications for a city council member.

**7-4-4401. Qualifications for city council member.** A person is not eligible for the office of city council member unless the person is a resident for at least 60 days preceding the election to office of the ward electing the person or of an area that has been annexed by the city or town and placed in the ward. (*Emphasis added*)

*Elector* is defined in the general provisions of Montana's election laws as "an individual qualified to vote under state law." Mont. Code Ann. § 13-1-101(16). *Elector* is also defined in the general provisions pertaining to municipal government as "a resident of the municipality qualified and registered to vote under state law." Mont. Code Ann. § 7-1-4121(3).

ARTICLE II § 5 (1/1/1997) Missoula City Charter pertaining to eligibility provides:

5. **Eligibility.** Only registered voters who are residents of the City shall be eligible to hold the office of City Council member. Both candidates for the office of City Council member, and City Council members must reside in the ward they represent.

### **CONCLUSION:**

Pursuant to Montana law, in order to be eligible to serve as a city council member an individual must be at least 18 years old, be a resident of the city council ward, be a qualified elector registered to vote, reside in the city council ward at least 60 days preceding the election or appointment, and be a citizen of both the United States and the state of Montana.

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/s/

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Jim Nugent, City Attorney  
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