

COMMISSIONER OF
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February 10, 2016

Johanna Clark
Legislative Candidate for HD 93
406-880-4393
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COPP-2016-AO-003

Re: Legislative Candidate Residence in Two Counties

Dear Ms. Clark:

I write in response to your inquiry of January 25, 2016 requesting the Commissioner of Political Practices' (COPP) application of the residency rules to your specific situation as a current legislative candidate.

You requested a COPP advisory opinion regarding the following issue:

When an individual's residence is located in two counties at the same time, how will the COPP determine the county of residence for the purpose of qualifying for running for the legislature?

You offered the following facts to assist the COPP in preparing the Advisory Opinion:

- 1) "In 2015, my husband Stormy Clark and I owned property in Saint Ignatius, Montana for 15 years. On November 20, 2015, we closed on 192 acres of agricultural land located in Hot Springs, Montana. The property purchased is a whole parcel, undivided, that currently resides in both Lake County and Sanders County. The only dividing factor to this parcel of land purchased is the County line that is located North to South, centering the property in question. I specifically pay taxes to both Counties.
- 2) As of this date, I am currently registered to vote in Lake County, my vehicle (2008 Toyota Tundra) as well as all other vehicles owned are licensed in Lake County, my residential mail box for my current property is located in Lake County and I bank (Glacier Bank of Ronan) in Lake County, Montana. It is also worthwhile to note that I work in Lake County five days of the week. It is my intention to continue the relationship in Lake County that I currently utilize."

- 3) Further in a phone conversation you informed the COPP that your home is situated eight feet into Sanders County while your mailbox is located in Lake County.¹

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses "the applicability of a rule or statute administered by the Commissioner." 44.11.102 ARM.

SHORT ANSWER

Ms. Clark's residence for the purpose of seeking election to the 2016 Legislature is in Lake County.

DISCUSSION

The Commissioner is charged with investigating all alleged violations of Title 13, Chapters 35 and 37, Mont. Code Ann. § 13-37-111. In the past, complaints have been filed with the COPP requesting a review of a candidate's residence as provided on their campaign finance reports or on their declaration of nomination filed with the Secretary of State; the COPP has accepted these complaints and reviewed the candidate's documents for a potential violation of Mont. Code Ann. § 13-35-207, concerning deceptive election practices.

Ms. Clark's residence is contiguous 192 acre property which falls on both sides of the county line between Sanders and Lake County. In a proactive move, Ms. Clark has asked the Commissioner for an advisory opinion determining whether she meets the residency requirements to be a candidate for House District 93 in the 2016 election cycle.²

Residency requirements for Montana candidates support two compelling state interests providing for representation of the people by elected officials, *see Chimento v. Stark*, 353 F.Supp. 1211 (D.C.N.H.), affirmed 414 U.S. 802 (1973). The first is to ensure that a candidate "is exposed to the problems, needs, and desires of the people" of the state or district. *Id.* at 1217. The second is to provide an opportunity to the people of the state or district "to observe him and gain firsthand knowledge about his habits and character." *Id.*

Court determinations of a candidate's residency rely on objective facts that support the candidate's subjective claimed residence. Based on the facts provided by Ms. Clark, she has been a resident of Lake County for the past 15 years. When searching for a new residence, she purposefully looked for property in Lake County. As of November 20, 2015 Ms. Clark owns a 192 acre undivided parcel of land on which her home sits that is located partially in Sanders County and partially in Lake County. Ms. Clark pays property taxes in both Sanders and Lake

¹ Ms. Clark is also the proud owner of a law school professor's dream hypothetical for application of law to a fact pattern.

² A true Baarle-Hertog, Belgium and Baarle-Nassau, Netherlands issue.

<https://en.wikipedia.org/wiki/Baarle-Nassau>

Counties. All of Ms. Clark's other relevant ties including registration of vehicles, employment, and banking are to Lake County. Based on these facts, Ms. Clark is familiar with the county in which her chosen district is located, and the people of Lake County should have ample opportunity to interact with her.³

1. Montana Residency Requirements for Legislative Candidates

The Montana Constitution, Article V, section 4 provides:

A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident 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.

(Emphasis added.)

According to the facts provided by Ms. Clark, she has been a resident of the State of Montana and Lake County for the past 15 years. House District (HD) 93 is a legislative district that is entirely contained within Lake County (SOS website "Montana Legislative District to County Index," 2014-2023).⁴ Lake County contains one or more house districts, specifically HD 10, 12, 15, 93 (SOS website, "Montana County to Legislative District Index," 2014-2023).⁵ Therefore, in order to qualify as a candidate for House District 93, Ms. Clark must be a resident of Lake County for the six months before November 8, 2016.

2. General Rule, Mont. Code Ann. § 1-1-215

Within Montana Code Annotated there is a general rule to apply when determining an individual's residence:

"Residence -- rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

...

(7) The residence can be changed only by the union of act and intent.

³ Here, Ms. Clark's house is situated only eight feet from the county line. In previous decisions, Commissioners have respected an even greater distance between a candidate's residence and the district in which they are running for election to in analyzing their connections to the community, see *Motta v. Laslovich*, 11/18/09 Commissioner Unsworth.

⁴ <http://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Maps/Adopted-Plan/Reports/district-to-county-index-2013.pdf>

⁵ <http://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Maps/Adopted-Plan/Reports/CountytoDistrictIndex-2013.pdf>

Mont. Code Ann. § 1-1-215 (emphasis added).

According to the statute above and the facts provided by Ms. Clark, her place of residence is a property that situated on both sides of the county line between Sanders and Lake County. Ms. Clark claims the location as her residence, and Lake County as the county of her residence. Unless a "specific statutory exception" exists, she has not abandoned her intent to be a resident of Lake County even though her property exists on both sides of a county line, *id.* (2) and (7).

3. Specific Rule, Mont. Code Ann. § 13-1-112

Montana law also provides a specific rule for determining the residence of an individual for the purposes of registering to vote, casting a ballot, or running for the state legislature: "The residence of an individual is where the individual's habitation is fixed and to which whenever the individual is absent, the individual has the intention of returning," Mont. Code Ann. § 13-1-112(1). Here, Ms. Clark claims a "habitation" that is an undivided parcel of property physically straddling a county line, thus situating it partially in two different counties. Recalling the purpose of the residency requirement is to facilitate a candidate's connection to the district which they represent, there is no factual basis for the Commissioner to challenge Ms. Clark's declared residence in Lake County, *see Chimento supra*.

Another subsection of this statute provides: "An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district," Mont. Code Ann. § 13-1-112(4). Ms. Clark registered to vote in Lake County. Based on the facts provided by Ms. Clark, unless she casts her ballot in another state or district, she has not lost her residency in Lake County. Recalling the purpose of the residency requirement is to facilitate a candidate's connection to the district which they represent, the Commissioner has no facts to challenge Ms. Clark's registration as a voter in Lake County, *see Chimento supra*.

Further down the statute, another subsection provides for a presumption with an exception: "The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides," Mont. Code Ann. § 13-1-112(7). Commissioner Unsworth found that a candidate has the right to declare their residence based on a choice between their marital home and their hometown residence, *see Motta v. Laslovich*, 11/18/09.

Here, Ms. Clark's family physically resides on a property which is partially located in both Sanders and Lake Counties. The house on the property is situated approximately eight feet within Sanders County while her mail box is in Lake County. Ms. Clark considers the entire property is her residence and she intends to continue her residence in Lake County. Recalling the purpose of the residency requirement is to facilitate a candidate's connection to the district which they represent, the Commissioner has no facts which conflict with Ms. Clark's stated intention of remaining a resident of Lake County, *see Chimento supra*.

Finally the specific statute provides that "[a] change of residence may be made only by the act of removal joined with intent to remain in another place," Mont. Code Ann. § 13-1-112(8). As asserted by Ms. Clark, she has continually maintained her intention to be a resident of Lake County. Although she moved from her former residence in Lake County (located in St. Ignatius), and changed her residence to a location partially situated in both Sanders and Lake Counties, Ms. Clark has maintained an intention to be a resident of Lake County, and she therefore has not formed the requisite intent so as make her a resident of Sanders County for purposes of running for legislative office. Mont. Code Ann. §§ 1-1-215(7) (change of residence requires a union of both action and intent), 13-1-112(8) (same). Recalling the purpose of the residency requirement is to facilitate a candidate's connection to the district which they represent, the Commissioner has no facts contrary to Ms. Clark's stated intention to be a resident of Lake County, *see Chimento supra*.

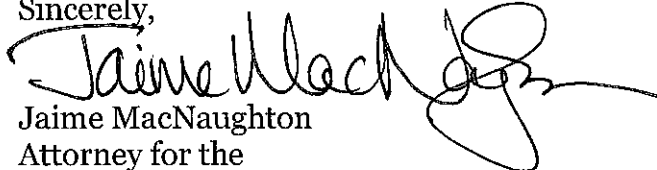
CONCLUSION

Given that there is no specific statutory exception for making a determination in an instance wherein someone's residence falls into two separate counties, the COPP respects Ms. Clark's claimed residence of Lake County. Therefore, COPP determines that for the purpose of running for legislative office in House District 93 Ms. Clark's residence is Lake County.

LIMITATIONS ON ADVISORY OPINION

This letter is an advisory opinion based on the specific written facts and questions as presented above. This advisory opinion may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules. This advisory opinion is not a waiver of any power or authority the Commissioner of Political Practices has to investigate and prosecute alleged violations of the Montana laws and rules over which the Commissioner has jurisdiction, including alleged violations involving all or some of the matters discussed above.

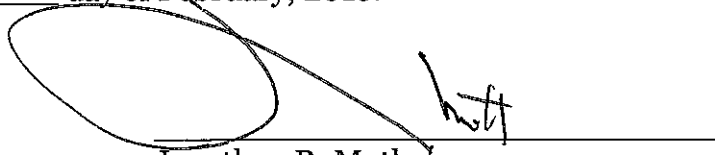
Sincerely,



Jaime MacNaughton
Attorney for the
Commissioner of Political Practices

I agree with this Advisory Opinion and afford it the full weight of the Commissioner's authority.

DATED 10th day of February, 2016.



Jonathan R. Motl
Commissioner of Political Practices