

5. Motta listed Philipsburg, Montana as his “residence (physical) address” on his Declaration of Nomination form filed with the Montana’s Secretary of State. The town of Philipsburg is located within Senate District 43.
6. Laslovich listed 112 Mountain View, Anaconda, Montana as his “residence (physical) address” on his Declaration of Nomination form. The Anaconda address listed by Laslovich is located within Senate District 43. Laslovich believed that his permanent residence was in Anaconda based on his understanding of Montana law when he filed his Declaration of Nomination and other candidate papers in 2008.
7. The Anaconda address listed by Laslovich in his 2008 statement of candidacy is the home owned by his parents. Laslovich does not own real property in Anaconda-Deer Lodge County or in any of the counties comprising Senate District 43, although he says he is in the process of purchasing property in Anaconda.
8. In the eight years preceding Laslovich’s 2008 Senate District 43 candidacy, he had been elected to two terms in the Montana House of Representatives (2000 and 2002) and one term as a State Senator (2004) from Anaconda. During Laslovich’s 2000, 2002, and 2004 candidacies, he was an undergraduate and law school student at the University of Montana. Laslovich listed his parents’ Anaconda street address as his residence in each of his previous campaigns.
9. Laslovich and his wife graduated from the University of Montana Law School in 2006. They jointly purchased a home in Helena, Montana in July of 2006 because Mrs. Laslovich had accepted a job with a Helena law firm beginning in September of 2006. The city of Helena is not located within Senate District 43.
10. Laslovich returned to Anaconda after his graduation from law school and commuted from Anaconda to his job with a Missoula law firm. He continued to work for the Missoula law firm until the start of the 2007 legislative session.
11. Laslovich stayed in the Helena home he and his wife jointly purchased during the 2007 legislative session.
12. Laslovich returned to Anaconda after the 2007 Legislature to work with his father in a family-owned construction business, Laslovich Construction. Laslovich has been a co-owner of Laslovich Construction since 1997.
13. Laslovich was appointed to an exempt position on the staff of then Attorney General Mike McGrath in July of 2007. Laslovich served at the pleasure of the Attorney General

in the exempt position and the job ended when McGrath left office to assume his duties as Supreme Court Chief Justice in January of 2009.

14. Laslovich stayed in the Helena home he and his wife jointly own during the period that he was employed by Attorney General McGrath.

15. In representations to the Commissioner's office, newspaper articles, and op-ed pieces in 2008, Senator Laslovich stated:

- his employment by the Attorney General was temporary;
- his employment would end when Attorney General McGrath's term expired at the end of 2008 (McGrath was elected Chief Justice of the Montana Supreme Court in the 2008 general election);
- he was in Lewis and Clark County for temporary purposes; and
- it was his intent to return to Anaconda-Deer Lodge County when his job with the Attorney General expired.

16. Laslovich lived in the Helena home he and his wife jointly own during the 2009 legislative session.

17. In May of 2009, Laslovich accepted an exempt position on the staff of newly elected State Auditor, Monica Lindeen. Laslovich serves at the pleasure of the State Auditor Lindeen and the job ends when she leaves office.

18. Laslovich is registered to vote and has voted in Anaconda. Laslovich's wife is registered to vote in Helena.

19. Laslovich's car is registered in Anaconda-Deer Lodge County.

20. Laslovich has a bank account at the First National Bank in Anaconda and says he does his banking in Anaconda.

21. While he was employed by Attorney General McGrath and continuing in 2009 after the legislative session, Laslovich says he traveled home to Anaconda every weekend, sometimes during the week, and on holidays.

22. When Laslovich returns to Anaconda, he resides with his parents at 112 Mountain View. Laslovich is the oldest of five children; the youngest is a senior in high school.

23. Laslovich denies that Lewis and Clark County is his residence. He asserts that Anaconda-Deer Lodge County is his lawful residence. Laslovich further asserts that his intent has always been to permanently return to Anaconda-Deer Lodge County when his temporary employment in Helena ends.

STATEMENT OF FINDINGS

§ 13-35-207, MCA, defines “deceptive election practices” and states that an individual is guilty of “false swearing” if he or she:

- (4) falsely makes a declaration or certificate of nomination;
- (5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;
- ...
- (10) makes a false oath or affidavit where an oath or affidavit is required by law.

Motta alleges that Laslovich falsely and knowingly listed his parents’ Anaconda address as his “residence (physical) address” on the 2008 Declaration of Nomination he filed with the Montana Secretary of State as a Senate District 43 candidate. (See § 45-7-202, MCA, for a definition of “false swearing.”) Motta also alleges that Laslovich was not a resident of Senate District 43 for six months preceding the November 2008 general election. Motta’s amended complaint interchangeably uses the phrases “physical address” and “physical residence” to assert that Laslovich is a lawful resident of Helena, not Anaconda.

Previous Commissioners have analyzed Montana’s sometimes confusing and inconsistent laws and court decisions governing residency determinations. (See Commissioner Linda Vaughey’s May 21, 2004 decision *In the Matter of the Complaint Against Pat Davison and David Mihalic (Davison/Mihalic Decision)*; Commissioner Gordon Higgins’ May 24, 2005 decision *In the Matter of the Complaint Against Ed McCrone (McCrone Decision)*; and Commissioner Higgins’ April 12, 2006 decision *In the Matter of the Complaint Against Russell L. Doty (Doty Decision)*.) The same statutes and my predecessors’ opinions must be examined in determining whether Laslovich committed deceptive election practices in claiming residency in Anaconda on his 2008 Declaration of Nomination.

Laslovich satisfies the Article V, § 4 constitutional requirement of being a resident of Montana for at least one year prior to the 2008 general election. Even under the facts and arguments in Motta’s amended complaint, Laslovich was either a resident of Anaconda or Helena since at least 2000.

The crux of Motta’s amended complaint is whether Laslovich’s residency for six months preceding the 2008 general election was in Anaconda, which is located within Senate District 43.

§ 13-1-112, MCA, declares that the residence of an individual seeking election to the legislature must be determined by the following rules "as far as they are applicable":

- (1) 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.
...
- (4) 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.
- (5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.
...
- (7) 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.
- (8) A change of residence may be made only by the act of removal joined with intent to remain in another place."

The following general residency rules in § 1-1-215, MCA, also apply to residency determinations under Montana law:

1-1-215. 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.

A residence cannot be lost until another is gained.

...

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

§ 13-1-112(4), MCA, specifies that Laslovich can only lose his Anaconda-Deer Lodge County residency if he "goes into another state or other district of this state" and exercises "the election franchise in the other state or district." Laslovich has not

registered to vote and has not voted in Helena. He has only sought to exercise his right to vote in Anaconda for the past nine years. Laslovich did not forfeit his claimed Anaconda-Deer Lodge County residency in Senate District 43 under the express language of § 13-1-112(4), MCA.

§ 13-1-112(5), MCA, also precludes a determination that Laslovich is a resident of Helena, not Anaconda-Deer Lodge County. Laslovich came to Helena without the requisite intent to make Helena his permanent residence. Laslovich has consistently and unequivocally maintained that his intentions are to return to Anaconda-Deer Lodge County after his temporary employment in Helena ends. Consistent with § 13-1-112(5), MCA, § 13-1-112(8), MCA, states that “a change of residence may be made only by the act of removal joined with intent to remain in another place.” (See also § 1-1-215(6), MCA.) No union of intent and removal has occurred in this matter.

§ 13-1-112(7), MCA, declares that a presumption of residency arises based on where an individual's family resides but that the presumption can be overcome by an intent to reside elsewhere. The term “family” is not defined in §§ 13-1-101 or 13-1-112, MCA. Laslovich has family in both Helena (a wife) and in Anaconda-Deer Lodge County (parents and a sibling). Laslovich spends substantial time with both segments of his family. During the work week, he is usually in Helena with his spouse. On most weekends and holidays, he returns to Anaconda and resides with his parents at their house. Laslovich can have only one residence for voting and legislative candidacy purposes and there must be an “act of removal joined with intent to remain in another place” for a change in residency to occur. (§§ 1-1-215(6) and 13-1-112(8), MCA.)

Laslovich’s intent to make Anaconda-Deer Lodge County his permanent place of residence coupled with the fact that he also lives with family (parents and siblings) in Anaconda allows Laslovich to invoke the family residency presumption in § 13-1-112(7), MCA. The legislature has chosen not to define which part of an individual’s family entitles a legislative candidate or a voter to the presumption of residency under §§ 13-1-112(7) or 13-1-101, MCA. As Commissioner, I have no power to insert what has been omitted. (§ 1-2-101, MCA.)

The “habitation is fixed” language in § 13-1-112(1), MCA, also applies to the residency determination in this matter. However, this residency test is filled with ambiguities and cannot be the basis for determining that Laslovich is a resident of Helena, not Anaconda-Deer Lodge County.

My predecessor, Commissioner Gordon Higgins, interpreted § 13-1-112(1), MCA, in the *McCrone Decision*. Commissioner Higgins, at page 11, ruled as follows:

McCrone asserts, for example, that he is in compliance with §13-1-112(1), MCA, because he has chosen his Story Mill Road property as the place where his "habitation is fixed" and to which he "has the intention of returning" (e.g., McCrone lists his Story Mill Road address on his driver's license and passport). The phrase "habitation is fixed" illustrates the ambiguities of the statute. The word "habitation" is alternatively defined in Webster's II New College Dictionary, 1995 edition, to mean "the act of inhabiting" or "dwelling place." The word "fixed" is defined in Webster's, *supra*, to mean "stationary" or "not subject to change or variation" or "constant." None of these plain language definitions from Webster's preclude McCrone's assertion that his Story Mill Road business was used as his dwelling place for several days and nights per month and that his business location is fixed (stationary or constant).

Laslovich's unequivocal and often stated intent to return to Anaconda-Deer Lodge County when his temporary employment in Helena ends, coupled with his decision to reside at his parents' "fixed" residence in Anaconda, is consistent with the language in § 13-1-112(1), MCA, and the *McCrone Decision*. This conclusion is reinforced by other objective facts supporting Laslovich's intent to make Anaconda-Deer Lodge County his permanent residence:

- Laslovich's vehicle is licensed in Anaconda-Deer Lodge County;
- he banks in Anaconda;
- he is registered to vote in Anaconda; and
- he is the part owner of his family's construction business in Anaconda.

In addition, Anaconda, not Helena, is the place where Laslovich resides "when not called elsewhere for labor or other special or temporary purpose and to which. . . [he] returns in seasons of repose." (§ 1-1-215(1), MCA. See also *Pletcher v. State of Montana*, 280 Mont. 419, 423-424, 930 P. 2d 656 (1996).)

Montana court decisions on residency rely heavily on facts that support an individual's expression of intent in the absence of oral or documentary evidence to the contrary, as illustrated by the following:

In *Bush v. Park County*, (Sixth Judicial District, Park County, Cause No. DV 02-180, April 15, 2004 Order,) District Judge Wayne Phillips ruled that National Park Service employees who were required to live at Mammoth in Yellowstone National Park, Wyoming could vote in Park County, Montana even though they did not reside in Park County. (*Id.*, page 13.) Judge

Phillips recognized that under the United States and Montana Constitutions, the right to vote is a "fundamental political right, because [it is] preservative of all rights." (*Id.*, page 11.)

The Court found that the electors had previously resided in Park County before being required to move to Wyoming as a condition of employment, paid Montana income taxes, had children attending school in Park County (at Gardiner, Montana), registered their private vehicles in Park County, had personal and commercial ties to Park County, had not registered to vote in Wyoming, and had expressed an unequivocal intent to permanently return to Park County upon completion of Park Service employment or the lifting of the Wyoming residency requirement as a condition of employment. (*Id.*, page 12.) Park County and the State of Montana expressed concerns about the electors being able to vote on tax and other matters "for which they would not have to bear the concomitant tax burden." (*Id.*) Judge Phillips balanced the electors' fundamental right to vote against the concerns expressed by Park County and the State and ruled that the electors were "residents" of Park County for the "purposes of the electoral franchise." (*Id.*)

(See also *Drummond v. Town of Virginia City*, 253 Mont. 428, 432 & 433, 833 P. 2d 1067 (1992) (refusal to invalidate nineteen mail-in ballots and rejection of a local definition of "resident" that was inconsistent with § 13-1-112, MCA); and *Lima School District No. 12 v. Simonsen*, 210 Mont. 100, 110 & 111, 683 P. 2d 471 (1984) (decision based on the particular facts of the case, expressions of intent, the general guidelines of § 1-1-215, MCA, and not "the mere application of mechanical rules".))

Constitutional residency requirements for candidates like those in Article V, § 4 and Article VI, § 3 of the Montana Constitution establish that such requirements are imposed for two reasons:

- a. To ensure that candidates are familiar with the needs, conditions, and problems of a state or district and that the electorate will have an opportunity to observe and have personal contact with a candidate; and
- b. To prevent frivolous candidacies by individuals with little exposure to a state's or district's problems and citizens. (See, e.g., the Davison/Mihalic Decision, pages 17-18; and *Chimento v. Stark*, 353 F. Supp. 1211 (D.C. N.H.), affirmed 414 U.S. 802, 94 S. Ct. 125 (1973).)

Nothing in Motta's amended complaint or the facts of this matter suggest that Laslovich was a "frivolous" candidate unfamiliar with the issues and electorate in Senate District 43. He handily defeated Motta in 2008 (5853 votes to Motta's 2391). Laslovich was also a successful legislative candidate in Anaconda-Deer Lodge County in 2000, 2002, and 2004. There is no evidence that Laslovich's temporary absences from Anaconda as a student or for work in Helena have prevented him from maintaining his familiarity with the needs, conditions, and problems in his legislative district or that the voters in his

district have been deprived of the opportunity to observe him on the campaign trail for the past nine years.

Laslovich returns to Anaconda-Deer Lodge County on a regular basis. The voters of Anaconda-Deer Lodge County have elected him to the Montana Legislature four times. Those same voters have the ultimate power to reject Laslovich's candidacy in future elections if they are dissatisfied with the amount of time he spends in Anaconda/Deer Lodge County while temporarily employed in Helena.

Laslovich licenses his vehicle in Deer Lodge County, banks and votes in Anaconda, and is a part owner in his family's business there. All of these acts are consistent with his repeated insistence that Anaconda-Deer Lodge County is his permanent place of residence and that he will return to Anaconda when his temporary work in Helena ends. Laslovich has combined the necessary acts and intent to establish that his residence for legislative candidacy, registration, and voting purposes is Anaconda-Deer Lodge County. (§§ 13-1-112(8) and 1-1-215(6), MCA.)

Laslovich is a resident of Anaconda-Deer Lodge County under the applicable statutes and constitutional provisions cited in this decision and decisions issued by my predecessors. Laslovich did not falsely swear that he was a resident of Anaconda in his 2008 Declaration of Nomination.

In reaching the preceding conclusion, it must be noted that the Motta complaint raises a legitimate concern about the length of time that Laslovich can lawfully claim permanent residency in Anaconda/Deer Lodge County while owning a home jointly with his spouse in Helena, residing with his spouse in Helena, and working temporarily (more than two years) in Helena. However, the legislature does not have unfettered discretion to impose residency requirements that infringe on other fundamental constitutional rights, such as the right to vote, the right to travel, or the right to pursue life's basic necessities, including the right to pursue employment. (See, e.g., the *Davison/Mihalic Decision*, pages 9-10; the *McCrone Decision*, pages 10-11; *Bush v. Park County*, *supra*; and *Wadsworth v. State of Montana and Dept. of Revenue*, 275 Mont. 287, 911 P.2d 1165 (1996). (Article II, § 3 of the Montana Constitution encompasses the inalienable right to pursue employment as one of life's basic necessities; the State wrongfully fired a Revenue Department employee for refusing to divest himself of a private real estate appraisal business).)

CONCLUSION

Based on the preceding, Jesse Laslovich did not violate § 13-35-207, MCA, or Article V, § 4 of the Montana Constitution.

Dated this 18th day of November, 2009.

A handwritten signature in black ink, appearing to read "Dennis Unsworth", with a long horizontal flourish extending to the right.

Dennis Unsworth
Commissioner of Political Practices