

SECOND NORTHERN MARIANAS CONSTITUTIONAL CONVENTION

SAIPAN, CM 96950

Telephone

6517/6572

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Date: July 3, 1985

Legal Opinion No. 29

Members

MEMORANDUM

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To : Attorney General  
From : Chairman, Committee on Local Government  
Subject : Request for Legal Opinion on Delegate  
Proposal No. 227-85.

Delegate Proposal No. 227-85 has been referred to the Committee on Local Government for deliberation and we hereby solicits your legal opinion on the following question:

Whether or not we can require voting in a prior election as a qualification for office under Delegate Proposal No. 227-85?

Thank you for your assistance.

  
Paul A. Manglona

XC: Con-Con President

Attachment



OFFICE OF THE ATTORNEY GENERAL  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

5TH FLOOR, NAURU BUILDING  
SAIPAN, CM 96950

PHONE: 6207-7111

REXFORD C. KOSACK  
ATTORNEY GENERAL

TO: Chairman, Committee on Local  
Government

DATE: 7-9-85

FR: Legal Counsel

RE: Voting in Prior Two Elections  
Legal Opinion No. 29

You have asked us to provide an opinion on whether or not as a qualification for mayoral office, a candidate shall have exercised his right to vote in the last two regular general elections of the Commonwealth.

Provisions restricting the privilege of holding office to those who are voters appear in the constitution and laws of many states, see Exhibit "A". It may be a fundamental principal of our government that none but a qualified voter may hold the elective office he seeks. However, no law has been found that a person seeking an elective office must have voted in the previous elections.

Although the U.S. Constitution does not guarantee a right to hold public office to any person, the equal protection clause does guarantee the right to be considered for such an office without the burden of invidiously discriminatory disqualification. Antonio v. Kirkpatrick, 453 F.Supp. 1161 affd. 579 F.2d 1147. Where an absolute requirement for holding public office arbitrarily and unfairly precludes bona fide candidates from service without a legitimate purpose to justify the exclusion, the restriction will not survive constitutional attack on equal protection grounds. Murphy v. Schilling, 271 Ind. 44, 389 N.E.2d 314. To restrict holders of the mayoral office to those who have voted in the last (or previous) two elections requires a legitimate object of government.

Since no law has been found directly on the issue presented, we must look to other qualifications that have been imposed for the privilege to hold office and view how the courts have treated them when they have been questioned. Most voting laws contain provisions that a candidate for office must be a resident in the community. This is deemed a proper qualification for office as the business of the office should be performed by those who live there. Problems arise when the residency requirement is of such

*Rec'd 7/10/85 - am/cw*

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duration that no legitimate purpose is served and the restriction imposed touches upon a candidate's fundamental interest to run for public office. Attempts to justify a residency requirement have frequently been based upon the goals of the community of attaining candidates who are aware of the problems within the community and governmental unit that they are to serve, Chimento v. Stark, 353 F.Supp. 1211; of attaining voters who are aware of the relative merits of the candidates, Walker v. Yucht, 352 F.Supp. 85; and of precluding fraudulent candidates by persons who are not seriously concerned with or capable of serving the constituents. Draper v. Phelps, 351 F.Supp. 677. The courts have upheld residency requirements that set forth a specific time of residency. However, when the qualification restriction exacts a length of time that cannot be justified as being necessary to insure only proper candidates will be elected, the laws have been struck down.

One reason that the courts have upheld that a person may be required to register to vote before he is qualified to run for the office sought is that the registrar of voters is set up to check into a person's claim of residency, good character, etc. This work of the registrar of voters may be used by the election board to ascertain the qualifications of prospective candidates and need not be duplicated by any other agency. No burden is placed upon any citizen by requiring him to register before he is eligible to run for office. The courts want impartial, uniform and reasonable laws, Morris v. Powell, 125 Ind. 281, 25 N.E. 221. Certainly a mayoral candidate who has been a resident for five years and has voted in the general elections probably has sufficient interest in local affairs so that he would not be considered to be a fraudulent candidate; the voters probably would know him, and he would more than likely be aware of local problems.

But, would the fact that he had voted in previous elections make him a better candidate than one who was otherwise qualified but for some reason or other had not exercised his right to vote? It is our belief that requiring a qualification that a candidate must have voted in the two previous elections does not meet the compelling interest test. The requirement that a mayoral candidate must have previously voted is not reasonable. Using the reasoning applied to cases involving registration, this places too much of a restriction on the non-voter and would be held to be unconstitutional.

We note from the proposed amendment submitted with the request that you have removed the qualification to vote in the Commonwealth and substituted the qualification that the mayoral candidate must qualify to vote in the island or islands served by the mayor. This amendment may not be necessary since at present the

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requirement to vote in the Commonwealth does not vary from island to island. Should there be different requirements for the right to vote from island to island, then such an amendment would be necessary.

A handwritten signature in cursive script, reading "Eric S. Smith". The signature is written in black ink and is positioned above the typed name.

ERIC S. SMITH  
Assistant Attorney General

Attachment

## B. TABULATED STATUTORY MATERIAL

### QUALIFICATIONS FOR VOTING

State or other jurisdiction	Minimum age	U. S. citizen	Residence in			Literary test	Poll tax(a)
			State	County	District		
Alabama.....	21	*	2 yrs.	1 yr.	3 mo.	....	(c)
Alaska.....	19	*	1 yr.	....	30 da.	....	(c)
Arizona.....	21	*	1 yr.	30 da.	30 da.	....	....
Arkansas.....	21	*	12 mo.	6 mo.	1 mo.	....	....
California.....	21	(h)	1 yr.(i)	90 da. (i)	54 da.	....	....
Colorado.....	21	*	1 yr.	90 da.	15 da.(j)	....	....
Connecticut....	21	*	1 yr.	....	6 mo.	....	....
Delaware.....	21	*	1 yr.	3 mo.	30 da.	....	....
Florida.....	21	*	1 yr.	6 mo.	....	....	....
Georgia.....	18	*	1 yr.	6 mo.	....	....	(l)
Hawaii.....	20	*	1 yr.	....	3 mo.	....	....
Idaho.....	21	*	6 mo.	30 da.	....	....	....
Illinois.....	21	*	1 yr.	90 da.	30 da.	....	....
Indiana.....	21	*	6 mo.	60 da.(o)	30 da.	....	....
Iowa.....	21	*	6 mo.	60 da.	10 da.	....	....
Kansas.....	21	*	6 mo.	30 da.(o)	30 da.	....	....
Kentucky.....	18	*	1 yr.	6 mo.	60 da.	....	....
Louisiana.....	21	*	1 yr.	1 yr.	3 mo.(p)	....	(d)
Maine.....	21	*	6 mo.	3 mo.	3 mo.	....	....
Maryland.....	21	*	1 yr.	6 mo.	6 mo.	....	....
Massachusetts..	21	*	1 yr.	....	6 mo.(r)	....	....
Michigan.....	21	*	6 mo.	....	30 da.	....	....
Minnesota.....	21	(h)	6 mo.	....	30 da.	....	....
Mississippi.....	21	*	2 yrs.	....	1 yr.(t)	....	....
Missouri.....	21	*	1 yr.(w)	60 da.	60 da.	....	....
Montana.....	21	*	1 yr.	30 da.	....	....	....
Nebraska.....	21	*	6 mo.	40 da.	10 da.	....	....
Nevada.....	21	*	6 mo.	30 da.	10 da.	....	....
New Hampshire..	21	*	6 mo.	....	6 mo.	....	....
New Jersey.....	21	*	6 mo.	60 da.	....	....	....
New Mexico.....	21	*	12 mo.	90 da.	30 da.	....	....
New York.....	21	(h)	1 yr.	4 mo.	30 da.	....	(x)
North Carolina..	21	*	1 yr.	....	30 da.	....	....
North Dakota... Ohio.....	21 21	* *	1 yr. 1 yr.(y)	90 da. 40 da.	30 da. 40 da.	.... ....	.... ....
Oklahoma.....	21	*	1 yr.	6 mo.	30 da.	....	....
Oregon.....	21	*	6 mo.	....	30 da.	....	....
Pennsylvania... Rhode Island... South Carolina..	21 21 21	* * *	1 yr.(z) 1 yr. 2 yrs.(aa)	.... .... 1 yr.	2 mo. 6 mo. 4 mo.	.... .... (ab)	.... .... ....
South Dakota... Tennessee..... Texas..... Utah..... Vermont.....	21 21 21 21 21	* * * (h) *	1 yr. 12 mo. 1 yr. 1 yr. 1 yr.	90 da.(ac) 3 mo. 6 mo. 4 mo. 1 yr.	30 da.(ac) .... 6 mo. 60 da. 3 mo.(o)	.... .... .... .... ....	.... .... (u) .... ....
Virginia..... Washington..... West Virginia... Wisconsin..... Wyoming.....	21 21 21 21 21	* * * * *	1 yr. 1 yr. 1 yr. 1 yr.(y) 1 yr.	6 mo. 90 da. 60 da. 1 yr. 60 da.	30 da. 30 da. 10 da. 10 da. 10 da.	.... .... .... .... ....	(ac) .... .... .... ....
Guam..... Puerto Rico..... Virgin Islands...	18 21 21	* * *	2 yrs. 1 yr. 1 yr.	.... .... ....	90 da.(ah) 1 yr. 60 da.	.... .... ....	.... .... ....

NOTE: no state has property qualifications for voting in a general election. Some states have property qualifications for voting on bond issues or special assessments.

(a) Poll or head taxes are levied in many other states. Those listed here provide that payment of the poll tax is a prerequisite for voting.

(b) All states which have permanent registration, except Alabama, Delaware, Florida, Maine, Mississippi, Nebraska, New Hampshire and South Dakota, make it subject to cancellation for failure to vote at certain specified intervals.

(c) Must pay all poll taxes owed for the two years next preceding election at which person elects to vote. Persons who have honorably served in the military service of the United States while the United States is engaged in hostilities, whether war is declared or not, are exempt from payment of poll taxes.

(d) Registration is permanent unless removed for cause.

(e) Must be able to read or speak the English language.

(f) Municipal election.

(g) Except for irrigation district elections.

(h) Must have been citizen 90 days.

(i) Persons who have resided in the state for at least 54 days may vote for Presidential elections if, immediately prior to moving to the state, they were qualified electors in another state or would have been eligible to vote in such other state at the time of such election. Such persons must meet all other qualifications for voting.

(j) City or town, 30 days.

(k) All except certain minor elections.

(l) Under 1949 act, all voters must re-register and pass literacy test. Those failing test may qualify by answering 10 of several questions prescribed by law.

(m) English or Hawaiian language.

(n) For all state and federal elections.

(o) Township.

(p) Municipality, four months.

From Book of the States 1961-62; with permission of the Council of State Gov'ts.

QUALIFICATIONS FOR VOTING—Continued

Type		Registration			Coverage		State or other jurisdiction
Permanent(b)		Periodic		Frequency	All elections	Some elections	
All areas	Some areas	All areas	Some areas				
★(d)	....	....	....	....	★	....	Alabama
....	★	....	....	....	(f)	....	Alaska
★	....	....	....	....	(g)	....	Arizona
....	....	....	....	....	....	....	Arkansas
★	....	....	....	....	★	....	California
★	....	....	....	....	....	(k)	Colorado
★	....	....	....	....	★	....	Connecticut
★	....	....	....	....	★	....	Delaware
★	....	....	....	....	★	....	Florida
★(d)	....	....	....	....	★	....	Georgia
★	....	....	....	....	★	....	Hawaii
★	....	....	....	....	★	....	Idaho
★	....	....	....	....	....	(n)	Illinois
....	★	....	★	4 years	....	(k)	Indiana
....	....	....	....	....	....	(k)	Iowa
....	★	....	★	....	★	....	Kansas
★	....	....	....	....	★	....	Kentucky
....	★	....	★	4 years	★	....	Louisiana
★	....	....	....	....	★	....	Maine
....	★	....	★	....	★	....	Maryland
★	....	....	....	....	★	....	Massachusetts
★	....	....	....	....	★	....	Michigan
....	★	....	★	....	(s)	....	Minnesota
★(d)	....	....	....	....	★(v)	....	Mississippi
....	★	....	★	4 years	★	....	Missouri
★	....	....	....	....	....	(k)	Montana
....	★	....	★	6 years	....	(k)	Nebraska
★	....	....	....	....	★	....	Nevada
★	....	....	....	....	★	....	New Hampshire
★	....	....	....	....	★	....	New Jersey
★	....	....	....	....	★	....	New Mexico
....	★	....	★	Annual	....	★	New York
★	....	....	....	....	★	....	North Carolina
....	....	....	....	....	....	....	North Dakota
....	★	....	★	....	★	....	Ohio
★	....	....	....	....	(s)	....	Oklahoma
★	....	....	....	....	★	....	Oregon
★	....	....	....	....	★	....	Pennsylvania
....	....	....	....	....	★	....	Rhode Island
....	....	★	....	Decennial	★	....	South Carolina
★	....	....	....	....	....	★	South Dakota
★	....	....	....	....	★	....	Tennessee
(ad)	(ad)	(ad)	(ad)	Annual	....	....	Texas
★	....	....	....	....	....	(k)	Utah
....	....	★	....	Every elec.	....	★	Vermont
(af)	....	....	....	....	★	....	Virginia
★	....	....	....	....	(g)	....	Washington
★	....	....	....	....	(ag)	....	West Virginia
....	★	....	....	....	★	....	Wisconsin
....	....	★	....	Every gen. elec.	....	★	Wyoming
★	....	....	....	....	★(v)	....	Guam
★	....	....	....	....	★	....	Puerto Rico
....	....	....	....	....	....	....	Virgin Islands

(n) Literacy test required, but exception allowed if person can pass certain specified requirements.  
 (r) In city or town.  
 (s) Except school district elections.  
 (t) Ministers of the Gospel and their wives may vote after six months' residence.  
 (u) Assessed upon citizens 21 to 60 years of age except those specifically exempted.  
 (v) Registration is for all elections of state and county, but voter must be registered in municipality also to vote in municipal elections.  
 (w) When voting for Presidential and Vice Presidential elections only 60 days' residence required.  
 (x) A person who became entitled to vote after January 1, 1912, must be able, except for physical disability, to read and write English.  
 (y) No residence requirement when voting for Presidential and Vice Presidential elections.

(z) Six months if previously an elector or native of the United States.  
 (aa) Ministers of the Gospel, teachers in public schools, and their spouses may vote after six months' residence.  
 (ab) Ownership of property is an alternative to literacy.  
 (ac) No elector who has changed his residence from one county or precinct to another loses his right to vote in his former county or precinct until he acquires voting residence in the new one.  
 (ad) Constitution provides for registration in cities over 10,000, but no system exists. Poll tax receipts determine eligibility of voters aged 21 to 60 years; exemption certificates determine eligibility for those over 60 in cities over 10,000, and for certain others.  
 (ae) Must use no part due taxes.  
 (af) Except in some cities.  
 (ag) All elections except special elections.  
 (ah) Precinct.