

Date Issued: March 25, 1982 (AGO 82-22)

Requested by: James N. Purdy, Edgeley City Attorney

- QUESTION PRESENTED -

Whether a person who is not a city resident is eligible to hold the office of city alderman.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a person who is not a city resident is not eligible to hold the office of city alderman.

- ANALYSIS -

The general qualifications for elected and appointed officers for all cities in North Dakota can be found in section 40-13-01 of the North Dakota Century Code. That section states as follows:

40-13-01. QUALIFICATIONS OF ELECTIVE AND APPOINTIVE OFFICERS. No person shall be eligible to hold an elective municipal office unless he is a qualified elector of the municipality and unless he has been a resident thereof for at least nine months preceding the election. No person shall be eligible to hold an appointive office unless he is a citizen of the United States. No person in default to the municipality shall be eligible to any office.

Section 40-08-05, N.D.C.C., is a specific statute dealing with the eligibility qualifications for those who wish to run for the office of city alderman. That section states as follows:

40-08-05. QUALIFICATIONS OF ALDERMEN. No person shall be eligible to the office of alderman if he:

1. Is not a qualified elector of and resident within the ward for which he was elected, except that in cities where aldermen are elected at large, he shall be a qualified elector of and a resident within the city; or
2. Has been convicted of malfeasance, bribery, or other corrupt practice or crime.

Based upon these two statutes, it is my opinion that a person is not eligible to run for the office of city alderman when he is not a resident of that city. Candidates for the position of city alderman must be residents of that city for at least nine months preceding the election. In determining one's residence, the seven rules of residency found in section 54-01-26, N.D.C.C., must be consulted.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Terry L. Adkins
Assistant Attorney General