



**State Administration and Veterans' Affairs Interim Committee**  
**63rd Montana Legislature**

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TO: Sheri Scurr on behalf of the State Administration and Veterans' Affairs  
Committee

FROM: K. Virginia Aldrich, Staff Attorney

RE: Voting Rights in Special Purpose Districts

DATE: April 2, 2014

**Question Presented**

This memorandum was prepared for the State Administration and Veterans' Affairs Interim Committee in response to a request for information by Sheri Scurr concerning voting rights for out-of-state landowners with respect to special purpose districts. Specifically, the following question was asked:

May the state restrict voting for county water and sewer districts under section 7-13-2212, MCA, to in-state residents and in-state landowners?

**Short Answer**

Yes, the Legislature may likely restrict voting for county water and sewer districts to in-state residents and in-state landowners.

**Discussion**

Under current state law, an elector who is the owner of real property within a county water and sewer district must only be "qualified if registered to vote in any state of the United States" and must file proof of registration with the election administrator within a specified time period. Section 7-13-2212, MCA. Most other special purpose districts require that an elector is qualified to vote in a county of the State of Montana, rather than in any state of the United States. *See e.g.*, section 7-11-1011, MCA. This memo analyzes whether the state may restrict voting in county water and sewer districts to in-state residents and in-state landowners to comport with the requirements of most other special purpose districts.

Because voting rights involve fundamental political rights, state legislation concerning voter qualifications and representation is usually evaluated under federal and state Equal Protection clauses using a strict scrutiny standard requiring a law to bear a close relationship to a compelling governmental interest. *See, e.g., Dunn v. Blumstein*, 405 U.S. 330 (1972); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Classifications that exclude otherwise qualified voters who are substantially affected and directly interested in a matter being voted upon must pass strict scrutiny. *Cipriano v. City of Houma*, 395 U.S. 701 (1969). The application of this high standard creates a difficult hurdle for state legislation concerning voter qualifications. More specifically, strict scrutiny is applied to qualifications that may exclude voters from voting at elections of general interest, including general obligation bond elections. *Phoenix v. Kolodziejcki*, 399 U.S. 204 (1970).

However, the U.S. Supreme Court has recognized certain exceptions to the strict scrutiny standard in voter qualification cases. It has noted that the Equal Protection clause does not require that the state never distinguish between citizens "but only that the distinctions that are made not be arbitrary or invidious." *Avery v. Midland County*, 390 U.S. 474, 484 (1968). Indeed, the courts have long held that classifications based on residency, citizenship, or age have not been considered suspect. *See, e.g., Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969). For instance, the U.S. Supreme Court has recognized that individuals who reside outside of a governmental unit have no fundamental right to vote in its election. *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978). Indeed, "[n]o decision of this Court has extended the 'one man, one vote' principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions. On the contrary, our cases have uniformly recognized that a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders." *Id.* at 68-69 (citations omitted). Furthermore, I have not found evidence that the Montana Supreme Court has granted nonresidents a fundamental right to vote under the Montana State Constitution.

Because special district elections are related to areas of specific interest and not general interest, voter qualifications are not subjected to a strict scrutiny analysis. Instead, special districts are subjected to a rational basis standard. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 730 (1973). To pass a rational basis review, a challenged law must be rationally related to a legitimate government interest. In *Salyer*, a plaintiff challenged a California statute limiting the right to vote for a water district's directors to resident landowners of the district. The U.S. Supreme Court found that a rational basis review was appropriate because of the "special limited purpose" and the "disproportionate effect" of the district's activities on landowners as a group. *Id.* at 728. Similarly, the Montana Supreme Court applied rational basis scrutiny to a challenge regarding an irrigation district commissioner freehold requirement. *Johnson v. Killingsworth*, 271 Mont. 1, 894 P.2d 272 (1995).

Hence, unlike elections of general interest, if an election concerns a special limited purpose that disproportionately affects a classification of voters, the courts are likely to apply a rational basis review. Here, county water and sewer districts are created for limited purposes. Like the water districts discussed in *Salyer*, the district has "relatively limited authority" because it provides acquisition, storage, and distribution of water, but it does not provide many other general government services such as schools, housing, or transportation. *Salyer*, 410 U.S. at 728. However, county water and sewer districts may also provide additional government-sponsored services such as water and sewer utilities within the district, and they may maintain and operate waterworks, sewerworks, canals, or reservoir systems. Section 7-13-2218, MCA. In *Ball v. James*, a class of registered voters challenged a voter qualification statute in a water district that could condemn land, levy taxes, and sell hydroelectric power to a large population. 451 U.S. 355 (1981). The class argued that these powers gave the district a substantial effect on all residents, including those landless residents who were restricted from voting. The U.S. Supreme Court rejected this argument, finding these additional district powers not constitutionally significant and applying a rational basis review. *Id.* at 365-366, 371. Thus, although nonresident landowners of a Montana county water and sewer district may have a substantial interest in public utilities provided by the district, the courts would likely apply rational basis scrutiny in this case. *See also Millis v. Board of County Commissioners of Larimer County*, 626 P. 2d 652 (Colo. 1981).

Thus, in a legal challenge, as long as the state can demonstrate that it has a legitimate government interest in restricting nonresident landowners from voting in county water and sewer districts and that the interest is rationally related to the restriction, the Legislature can likely restrict voting in county water and sewer districts to Montana residents and landowners.