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MONTANA FIFTEENTH JUDICIAL DISTRICT COURT, ROOSEVELT COUNTY

DARLA KAE DOWNS, Plaintiff/Petitioner, v. FRANK PIOCOS, Defendant/Respondent	Cause No. DV-43-2023-4 **FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER VOIDING ELECTION**

On January 20, 2023, the Plaintiff/Petitioner Darla Kae Downs ("Downs") filed a Complaint in which she (1) alleged that Defendant/Respondent Frank Piocos ("Piocos") was not eligible to be a candidate for the office of Roosevelt County Attorney at the time of the election as required by § 7-4-2201(3)(a), MCA; and (2) asked the Court to (a) declare that the Defendant/Respondent Frank Piocos ("Piocos") is not qualified to assume the office of Roosevelt County Attorney and (b) permanently enjoin Piocos from assuming the office of Roosevelt County Attorney. Downs also filed an Affidavit in which she raised the applicability of Title 13, chapter 36, part 1, MCA.

On February 1, 2023, Piocos filed his Answer in which he raised the applicability of § 7-4-2701(2), MCA; § 7-4-2201, MCA; *Luckey v. Brown,* No. COPP 2020-CFp-037; *Western Sec. Bank v. Eide Bailly LLP,* 2010 MT 291; § 1-1-215(2), MCA; Mont. Const. Art. II, Section 13; *Keller v. Smith,* 170 Mont. 399, 408, 553 P.2d 1002, 1008; Title 13, chapter 35, MCA; § 13-36-209, MCA; and Title 2, chapter 16, part 6, MCA. Piocos argued

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that there were no Title 7, MCA, or Title 13, MCA, violations and asked the Court to dismiss Downs' Complaint with prejudice, declare Piocos as the elected Roosevelt County Attorney; and immediately certify the Court's decision to the Roosevelt County Election Administrator; or annul and set aside the election under § 13-36-102(2), MCA, or similarly void the election and hold a special election pursuant to § 13-35-107(1)(a), MCA.

On February 3, 2023, pursuant to a Citation issued by the Roosevelt County Clerk of Court as required by §13-26-206, MCA, the Court heard the issues that had been raised. The parties appeared *pro se*. Pursuant to § 13-36-207, MCA, Piocos asked the Court not to allow witnesses other than the parties to testify. The Court granted the request because § 13-36-207, MCA, provides "no person other than the parties and their attorneys may be heard except by order of the court." The parties were sworn and testified.

Now, based upon all the evidence, the Court makes the following:

FINDINGS OF FACT

1. Downs is a registered voter (elector) for Roosevelt County, Montana.

2. Piocos ran for Roosevelt County Attorney in the 2022 election and won. At the time of the election, Piocos was the voting age required by the Montana Constitution, a citizen of Montana, and had registered to vote in Roosevelt County, Montana, but did not have a residence in Roosevelt County, Montana. While he had rented a commercial space in Culbertson, Montana, located within Roosevelt County, Montana, Piocos never used the space in any way. At the time of the election, when his workday ended, he would return to Valley County, Montana, to sleep.

From the forgoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the issues.

2. Montana law provides:

> [a]n elector may contest the right of any person to any . . . election to public office for which the elector has the right to vote if the elector believes that . . . the person was not, at the time of the election, eligible to be a candidate for the office.

Section 13-36-101(2), MCA. Downs is an elector with standing to bring this action.

3. Montana law further provides:

> [a] person is not eligible for a county office who at the time of election is not:
> (1) of the voting age required by the Montana constitution;
> (2) a citizen of the state; and
> (3)(a) an elector of the county in which the duties of the office are to be exercised . . ..

§7-4-2201(3)(a), MCA. Downs argued that, although Piocos had registered to vote in Roosevelt County where his duties as Roosevelt County Attorney would be exercised, he was not eligible to register to vote there.

4. Article IV, sec. 2 of the Montana Constitution provides: "Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court."

5. As for registration requirements, Montana law provides:

> **Qualifications of voter.** (1) A person may not vote at elections unless the person is:
> (a) registered as required by law;
> (b) 18 years of age or older;

(c) **a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days**, except as provided in **13-2-514**; and
(d) a citizen of the United States.

§13-1-111(1), MCA (emphasis added).

6. Guidance for determining a person's residence is found in §1-1-215, MCA. Residence may be "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." §1-1-215(1), MCA. In addition, "[t]here 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." §1-1-215(2), MCA. Finally, "[t]he residence can be changed only by the union of act and intent." §1-1-215(7), MCA.

7. Piocos was not qualified to vote in Roosevelt County or be considered an elector of Roosevelt County because he did not reside in Roosevelt County for at least 30 days before he registered to vote. *See* Art. IV, sec. 2, Mont. Const.; §13-1-111(1), MCA; § 1-1-215, MCA; *Burchett v. Mastec N. Am., Inc.*, 2004 MT 177, ¶¶ 22-24, 322 Mont. 93, 93 P.3d 1247; and *McCone County Fed. Credit Union v. Gribble*, 2009 MT 290, ¶¶ 14-16, 352 Mont. 254, 216 P.3d 206.

8. The office of Roosevelt County Attorney is a county office. §7-4-2203(1)(a), MCA.

9. The general qualifications to hold a county office provide that "[a] person is not eligible for a county office who at the time of election is not . . . an elector of the county in which the duties of the office are to be exercised . . .." § 7-

4-2201(3)(a), MCA. Piocos should not have been recognized as an elector at the time of his election to the office of Roosevelt County Attorney because he was not a resident of Roosevelt County, Montana.

10. Downs raised recognized grounds for contesting Piocos' election as Roosevelt County Attorney. § 13-36-101(2), MCA.

11. "If a court finds that a violation of [Title 13, MCA,] by any person probably affected the outcome of any election, the result of that election may be held void and a special election held at least 85 days after the finding." § 13-35-107(1)(a), MCA. Piocos was not eligible to be a candidate for Roosevelt County Attorney. § 13-36-101(2), MCA. This is a violation of Title 13, MCA. Therefore, Piocos' election as Roosevelt County Attorney is void and a special election must be held at least 85 days from today.

THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Court issues the following:

ORDER VOIDING ELECTION

1. The election of Frank Piocos as Roosevelt County Attorney is void.

2. There shall be a special election for Roosevelt County Attorney at least 85 days from the date of this Order.

DATED this 3rd day of February, 2023.

Katherine M. Bidegaray
District Court Judge