

Elections—County Seat—Electors, Registration Of.

Registration of electors for election to locate permanent county seat is governed by provisions of Chapter 122, Laws of 1915.

September 19, 1919.

Mr. O. J. Thompson,
County Attorney,
Circle, Montana.

Dear Sir:

I am in receipt of your letter of the 2nd instant requesting my opinion on the following question:

“Are qualified electors of McCone County whose registration cards show that they have resided within what is now McCone County for more than six months required to register to vote at a special election for the purpose of locating the permanent county seat of said McCone County called under the provisions of the Act approved March 9th, 1911, defined as ‘An Act to provide for the designation of temporary county seats and for the location of permanent county seats in new counties or in counties in which the permanent county seat has not been located.’”

Prior to 1911, the registration of electors was provided for by Chapter III, Title II, Part III (Sections 470 to 493 inclusive), Revised Codes 1907. Under this chapter the Board of County Commissioners of each county was required to establish and lay out convenient registration districts and to appoint a registry agent for each district whose duty it was to register electors residing within the district for which such registry agent was appointed, and no elector could register except with the registry agent for the district in which the elector resided. The duties of each registry agent were prescribed, the hours of registration fixed, provision was made for publication, by the registry agent, of a notice of the time when electors might register and when the time for registration would expire, for the posting of each registry agent of a list of the electors registered by him, for the hearing of objections by each registry agent, for the preparation by each registry agent and delivery by him to the judges of election of election registers, and check list. In fact, these sections provided a complete system for the registration of electors. However, the registration of electors provided for in these sections only applied to general elections as Section 491 provided that for any special election held for any purpose in any county, copies of the official register and check list, printed or

written before and used at the next preceding general election should be used, and no new registration should be had for any such special election.

The Twelfth Legislative Assembly, however, enacted a law (Chapter 113, Session Laws 1911) which repealed all of Sections 470 to 493 inclusive, and provided an entirely new and different system for the registration of electors. Under the provisions of this Act, registration districts and registry agents for each such district were entirely eliminated, and the county clerk of each county was made registrar for such county, all electors being required to register with such registrar, unless residing more than ten miles from the court house when they might register by appearing and making the property affidavit before a notary public or justice of the peace in the county in which they resided, and all duties which had been theretofore, under Sections 470 to 493, inclusive, required to be performed by the several registry agents were required to be performed by the county clerk as such registrar.

Chapter 135, Session Laws 1911, providing for the designation of temporary county seats and the location of permanent county seats, was enacted at the same session as Chapter 113, the registration act. Said Chapter 135 provides for special elections for locating permanent county seats, and Sections 4 and 5 thereof provide for the establishment of registration districts and the appointment of registry agents for the registration of electors for the special election to be held for the purpose of locating a permanent county seat, and also provides for the time for such registration and the hours of registration. Reading the provisions of Sections 4 and 5 of said Chapter 135, it is clearly evident therefrom that the legislature, at the time of the enactment of such chapter, had in view only the provisions of Sections 470 to 493, Revised Codes, as the only provisions found in our laws with reference to the establishment of registration districts and the appointment of registry agents appear in such sections, and Section 491, providing that no new registration should be had for a special election, it must have been clearly apparent to the legislature that some provision should be made for the registration of electors for such an election, hence the provisions placed in Sections 4 and 5.

It is not at all certain whether the provisions of Chapter 113, Session Laws 1911, were applicable to special elections, as no mention is made thereof in such Act, reference being made to general elections, primary nominating elections, school elections, municipal, city and town elections (Sections 7 and 18). However Chapter 113, Session Laws 1911, was amended by Chapter 122, Session Laws 1915, and there seems to be no doubt but what the provisions of said Chapter 113 as amended by said Chapter 122 apply to all elections of every kind, general and special, as Section 32 of said Chapter 122 defines the word "election" to mean general, *special*, primary nominating and municipal elections and elections in school districts of the first class.

The Act creating McCone County, Chapter 33, Session Laws 1919, provides that the temporary county seat of such county shall be selected and designated in the manner provided by Chapter 135, Session Laws 1911 (Chapter 3), and further provides that all original affidavits of registration affecting or relating to persons within the new county shall be, by the county clerk of the old county delivered to the county clerk of the new

county, and the same shall be preserved by said county clerk of the new county as permanent files of such new county (Section 11). By the provisions found in Section 11, it is apparent that the legislature intended that the transfer of these affidavits of registration should be in effect a transfer of that portion of the registration of the old county which belonged to the new county, so that it would not be necessary for electors residing in the new county, and who had registered in the old county prior to the creation of the new county, to register anew in the new county so long as they continued to vote at general elections.

By the amendment made to Chapter 113, Session Laws 1911, by Chapter 122, Session Laws 1915, a complete system for the registration of voters in all counties, both new and old, for all elections, whether general or special, is provided, and by the transferring of the affidavits of registration from the old county to McCone County the names of electors in the new county who had registered in the old county prior to the erection of the new county, appear as registered electors in the new county, and by complying with the provisions of Chapter 113, Session Laws 1911, as amended by Chapter 122, Session Laws 1915, an opportunity is afforded to all electors in McCone County, who were not registered in the old county prior to the creation of the new county, to register for such special election. In other words, by making the provisions of the general registration law now in force applicable to all counties and to all elections, the necessity for provisions for the registration of electors for a special election to locate a permanent county, such as contained in Sections 4 and 5 of Chapter 135, Session Laws 1911, has been removed.

Chapter 122, Session Laws 1915, also expressly repeals not only Chapter 113, Session Laws 1911, and all acts amending the same, but also all acts and parts of acts in conflict with the provisions of said Chapter 122.

I am, therefore, of the opinion that the provisions of Sections 4 and 5 of Chapter 135, Session Laws 1911, providing for the registration of electors for special elections for the purpose of locating permanent county seats, have been repealed and are no longer in force and effect, and that the provisions of Chapter 122, Session Laws 1915, control and govern the registration of electors for such an election.

Respectfully,

S. G. FORD,

Attorney General.