

**City Elections — May Person Not Nominated at the
Primaries be Voted for at the Regular Election—Nominations
After the Primaries.**

An elector may, at the general election, write in the name of any person he chooses to vote for and indicate his preference for such person.

No additional nominations can be made, however, after the primary election so as to result in the right to have the name of the candidate placed on the official ballot.

J. R. Wine, Esq.,
County Attorney,
Helena, Montana.

My dear Mr. Wine:

You have requested an opinion from me upon the following questions:

"1. Can a person, who was not nominated at the recent city primaries, be voted for at the coming city election?

"2. Can other nominations be made at this time so as to entitle them to a place on the official ballot?"

Section 5377 of the Revised Codes of 1921 provides, in part, as follows:

"Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. * * *

"On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. * * *
If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. * * * And these shall be the only candidates for mayor and councilmen at such general election."

From the foregoing provisions, it is apparent that the Legislature intended nominations to be limited to the method provided for in the statute.

Ballot laws providing for an official ballot with the names of all the candidates regularly nominated printed thereon are not objectionable as violating the freedom of elections, so long as the electors have the right and opportunity to vote for whom they please, by inserting in such ballot the name of any person for whom they may desire to vote.

20 C. J. Sec. 162, p. 141; Sec. 91, p. 105;

15 Cyc. 346;

People v. District Court, 18 Colo. 26, 31 Pac. 339;

State v. Anderson, 76 N. W. 482;

Littlejohn v. People (Colo.) 121 Pac. 159.

The provisions of our Constitution in relation to elections are as follows:

"All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." (Art. III, Sec. 5, State Constitution.)

"All elections by the people shall be by ballot." (Art. IX, Sec. 1, State Constitution.)

"In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected." (Art. IX, Sec. 13, State Constitution.)

While there are some cases to the contrary, the general rule is that the Legislature cannot restrict electors in their choice of candidates or prohibit them from voting for persons whose names are not printed on the ballot.

Barr v. Cardell, 173 Ia. 18, 155 N. W. 312;

Bowers v. Smith, 111 Mo. 45, 33 Am. St. Rep. 491.

The above provisions of our Constitution have twice been construed by former Attorneys General with relation to a provision found in the School Laws very similar to the above provision of Section 5377. These opinions are reported in Volume 5, at page 477, and in Volume 7, at page 57. It was held in both of these opinions that a provision in our School Law, to the effect that no one could be voted for or elected as School Trustee unless such person were nominated at a bona fide public meeting held in the district, violated the foregoing provisions of our Constitution, and that the name of any person might be written in on the ballot though not previously nominated.

I am, therefore, of the opinion that no additional nominations can be made at this time that would result in any right to have the name of any candidate placed on the official ballot.

I am also of the opinion that any elector may, at the coming city election, write in the name of any person he chooses to vote for and indicate his preference for such person, and that such vote is entitled to be counted.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.