Primary Elections—Ballot Forms—Ballots—Candidates— Rotation of Ballots—Ballot Stubs.

The number of sets of ballot forms into which the total registered vote is divided for rotation purposes is determined by dividing the total registration by the greatest number of candidates for any office on any party ticket.

The total number of sets are adjusted among the total number of precincts to meet the requirement that not more than one set shall be used in any precinct; where such an adjustment does not come out even an extra number of some set must be printed.

The stub is returned with the ballot by the absent voter.

June 14, 1928.

John J. Moran, Esq.,
    County Clerk,
        Great Falls, Montana.

My dear Mr. Moran:

You have submitted a number of questions in connection with the provisions of section 651 R. C. M., as amended by chapter 133, laws of 1923, and as further amended by chapter 14, laws of 1927.

Your first question relates to the meaning of "ballot forms" as used in the expression "He shall divide the whole number of ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office."

Ballot forms, as used in this chapter, mean the several party tickets attached together ready to be handed to the voter, and from which the voter selects his party ballot. Where there are three party tickets in the field the three tickets attached together would constitute one ballot form.

You state that "there are 75 precincts in Cascade county. If the 3 party tickets fastened together would constitute 1 ballot form, that presumably would be 75 ballot forms for the county if the 3 party tickets fastened together mean 3 ballot forms that would mean 225 ballot forms for the county." I do not understand that the number of precincts has anything to do with the number of ballot forms. The number of ballot forms would depend upon the greatest number of candidates for the nomination or election to any office.

You further state that presumably the greatest number of candidates would be for representatives in the legislature. Six are to be elected from your county. Assuming that twelve filed for the office, would that be construed that only two candidates had filed for each seat or that twelve had filed for each seat? Legislative seats are not designated in

any way so that each candidate becomes an aspirant for either of the six seats, but is merely required to defeat only six of the other candidates where there are a total of twelve running.

The statute in regard to rotation of names upon the ballots seems not to have been drawn with a legislative ticket in mind. Assuming that each elector votes for six and having no choice marks the first six names in the order that they appear upon the ballot, the candidate whose name appeared first on the ballot has no advantage over the one whose name appeared sixth, and if the six first names were rotated with the second six, all candidates would thereby have an equal chance with respect to the location of names upon the ballot. This would result from assuming that only two candidates were in nomination for each of the six offices. The statute, however, requires rotation to be made by removing one name from the top of the list for each nomination and placing such name at the bottom of the list for each successive set of ballot forms. To follow out this direction would require twelve rotations and twelve sets of ballots.

It is, therefore, my opinion that you should consider the twelve aspirants for office as each contesting against the other and divide the total number of ballot forms into twelve sets, assuming that this is the highest number of candidates for any office.

Your next question is: "Assuming that for the office of sheriff one to be nominated or elected and five had filed for the nomination, would that be construed to mean that five would be the number to be taken as the basis to ascertain the number of ballot sets?" Answer: Yes, providing that there is no other office for which there is a greater number of candidates. No rotation is necessary where there are less than three candidates for an office.

You next call attention to the proviso: "Provided, however, that no more than one of said sets shall be used in printing the ballots for use in any one precinct," and that all ballots furnished for use in any precinct shall be of one form and identical in every respect, and wish to know how this would be applied with respect to a precinct where there were 450 voters, so as to permit of rotation of names. Answer: There will be no rotation of names with respect to any one precinct, no matter how many voters were registered therein. The statute requires that one of the sets be used exclusively in such case, and of course there can be no rotation of names without violating the above proviso.

The statute is silent as to the method of choosing the particular ballot forms for the several precincts. In my opinion the legislature must have intended that the county clerk should use his discretion in this regard, and so plan the precincts that substantially the same number of ballots should be prepared and used for each of the several ballot forms.

Your next question is: "Assuming again that one of the party tickets contains the names of 12 candidates for the legislature, another contains the names of 10 candidates for the legislature, and a third, six names, a total of 28 names, from which six are to be nominated. Would

the 28 names be taken as a divisor, to ascertain the number of sets?"
Answer: No, the divisor would be the greatest number of given candidates on one ticket; twelve in that case.

Your next question is: "After preparing his ballot the elector shall detach the same from the remaining tickets"——"that evidently means that the stub of the ticket voted would remain with the stubs of the unvoted ballots"——"immediately after canvassing the vote, the judges without examination destroy the tickets deposited in the blank ballot box."——"That would mean the stubs of the voted ballots would be destroyed." In case of a contest no evidence would be available except the voted ballots. Is not this paragraph in conflict with the general election laws governing the canvass of votes?"

It does not occur to me that there would be any conflict with the general election laws by following the direction of the statute indicated. Each voter selects his party ticket or ballot from the ballot form that is handed him by the judge of the election.

Your next question is: "In the case of absent voter ballots should there be an envelope furnished the voter for the return of the stubs and unvoted tickets?" I do not think that this is necessary. The ticket is detached from the ballot form and the ticket together with the stub and remaining tickets is inclosed with the same in an envelope and returned to the judges of election. The judges open the envelope on election day, depositing the ballot with the ballots voted, and the unused portion in the box provided for that purpose.

<div style="text-align:center">Very truly yours,</div>

<div style="text-align:center">L. A. FOOT,
Attorney General.</div>