

Presidential Electors—Nomination.

The state of Montana has provided by chapter 126, laws of 1927, the manner in which presidential electors shall be nominated and the secretary of state cannot accept certificates of nomination for such electors unless such nominations are made as therein provided.

September 17, 1928.

John W. Mountjoy, Esq.,
Secretary of State,
Helena, Montana.

My dear Mr. Mountjoy:

You have requested my opinion on the following question:

“Under the provisions of chapter 126 of the laws of 1927, can the secretary of state accept certificates of nomination for presidential electors from political parties that did not cast the three per cent vote mentioned in chapter 7 of the laws of 1927, or from new political parties, where such nominations were not made at a convention held as provided in chapter 126?”

You have referred to the provisions of chapter 7 of the laws of 1927 which provides in part as follows:

“Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in congress, as above, and any new political party about to be formed or organized, may make nominations for public office as provided in section 612 of this code.”

And section 612 R. C. M. 1921 provides:

“Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public office to be filled by election in the state. A convention or primary meeting within the meaning of this chapter is an organized assemblage of electors or delegates representing a political party or principle.”

However, article II of section 1 of the constitution of the United States provides:

“Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole

number of senators and representatives to which the state may be entitled in the congress; * * *.”

The state of Montana has provided by chapter 126, supra, how these electors shall be nominated and no provision is made for the nomination of electors other than as therein stated. It might be contended that this is a public office and therefore comes within the provisions of section 612, supra; however, if so considered, then the provisions of this section and of chapter 126 are in direct conflict, and since chapter 126 is dealing with the specific subject, to-wit, the nomination of presidential electors, it must prevail.

It is therefore my opinion that the secretary of state cannot accept certificates of nomination for presidential electors unless such nominations are made as provided by chapter 126 of the laws of 1927.

Very truly yours,

L. A. FOOT,
Attorney General.