

Opinion No. 203.

**Elections—Secretary of State—
Certificate of Elections—Ballots.**

Held: The provisions of Section 644, Revised Codes of Montana, 1935, is the law applicable to the time of filing petitions by candidates for the primary election to be held July 18, 1944; and Section 648, Revised Codes of Montana, 1935, is the law applicable to the procedure your office is to follow in arranging the names on the ballot and certifying to the county clerks for said primary election.

April 17, 1944.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

You have submitted the following question for my opinion:

There is considerable misunderstanding throughout the state, as evidenced by the inquiries to this office regarding the time for filing petitions for nominations by candidates at the primary elections to be held on July 18, 1944. This confusion has arisen by the enactment of Chapter 104 and 105, Laws of 1943. Will you kindly give me your opinion as to whether Sections 644 and 648, Revised Codes of Montana, 1935, control, or do Sections 618 and 619, Revised Codes of Montana, 1935, as amended by Chapters 104 and 105, Laws of 1943, control.

In answering your inquiry it will be noted that Chapter 65, Revised Codes of Montana, 1935, containing Sections 631 to 670, both inclusive, comprise the initiative measure constituting our direct primary law.

Section 644 of said act, Revised Codes of Montana, 1935, is as follows:

"All petitions for nomination under this act for office to be filed by the state at large or by any district consisting of more than one county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in

the office of the secretary of state not less than forty days before the date of the primary nominating election; and for other offices to be voted for in only one county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not less than thirty days before the date of the primary nominating election."

Section 648, Revised Codes of Montana, 1935, is as follows:

"Not more than forty days and not less than twenty-five days before the day fixed by law for the primary nominating election the secretary of state shall arrange, in the manner provided by this law, for the arrangement of the names and other information upon the ballots, all the names and information concerning all the candidates for nomination contained in the valid petitions for nomination which have been filed with him in accordance with the provisions of this law, and he shall forthwith certify the same under the seal of the state, and file the same in his office, and make and transmit a duplicate thereof by registered letter to the county clerk of each county in the state, and he shall also post a duplicate thereof in a conspicuous place in his office and keep the same posted until after said primary nominating election has taken place. In case of emergency the secretary of state may transmit such duplicate by telegraph."

Neither Section 644, Revised Codes of Montana, 1935, nor Section 648, Revised Codes of Montana, 1935, were amended by said Chapter 104 or Chapter 105, Laws of 1943.

Section 644, Revised Codes of Montana, 1935, is the law governing the time for filing petitions for nomination of a candidate for the primary election and is exclusive. (State ex rel. Bevan v. Montjoy, 82 Mont. 594, 597, 268 Pac. 558.)

Section 648, Revised Codes of Montana, 1935, covers your duty in arranging the names on the ballot, certifying the same and transmitting the same to the county clerks and designates the time in which you shall perform such acts.

Sections 618 and 619, Revised Codes of Montana, 1935, as amended by Chap-

ters 104 and 105, Laws of 1943, relate to Chapter 64, Revised Codes of Montana, 1935, (Political Code), consisting of Sections 612 to 630, both inclusive.

This chapter and the sections therein pertain to nominations by any new parties, and minor parties that did not cast three per centum or more of the total vote cast for representatives in Congress, at the next preceding general election and for independent candidates desiring to file certificates or petitions of nomination, between the dates of the regular primary and the general election. (See *State ex rel. Foster, et al., v. Montjoy*, 85 Mont. 162, 168, 271 Pac. 446.)

Therefore it is my opinion the provisions of Section 644, Revised Codes of Montana, 1935, is the law applicable to the time of filing petitions by candidates for the primary election to be held July 18, 1944; and Section 648, Revised Codes of Montana, 1935, is the law applicable to the procedure your office is to follow in arranging the names on the ballot and certifying to the county clerks for said primary election.

Sincerely yours,
R. V. BOTTOMLY
Attorney General