

Opinion No. 43.**Elections—Highway Debenture
Election—County Officials.**

Held: Inasmuch as Chapter 217, Laws of 1943, provides (in Section 20 thereof) the general election laws of the state **must** be carried out in advertising and noticing the highway debenture election of June 8, 1943, unless specifically prescribed otherwise in the chapter, and inasmuch as there is no specific provision Section 567, Revised Codes of Montana, 1935, shall not be followed, the various county clerks must cause to be posted—not less than thirty days before the election of June 8, 1943—at least five copies of the printed registry list in at least five conspicuous places within each precinct. Since there is no provision to the contrary, such list should be published in toto, as for any other election. In view of the fact registration for the June 8th election will not be

closed at the time of such posting, the posted lists naturally can show no more than the names of those registered at the time of printing.

April 15, 1943.

Mr. R. F. Hibbs
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hibbs:

You have asked this office to clarify the ruling contained in Part III of Opinion Number 29, Volume 20, Report and Official Opinions of the Attorney General, wherein this office ruled each county clerk must prepare and post a list of registered electors as required by Section 567, Revised Codes of Montana, 1935. You inquire if such list should include the names of all electors or only those eligible to vote at the highway debenture election of June 8, 1943.

Section 20 of Chapter 217, Laws of 1943, the chapter which authorizes the election, provides in part:

"The County Commissioners and County Clerk in each county and the election judges, clerks and officers therein **must, in all respects, carry out the provisions of this Act** in the calling, advertising, noticing, registration, preparation and furnishing of ballots and supplies for the election, holding and conducting of the election, county, canvassing and return of the votes **as prescribed by the General Election Laws of the State of Montana, except as herein specifically prescribed . . .**" (Emphasis mine.)

In the particular section of Chapter 217 quoted above, it is doubtful if the legislative assembly could have expressed its intention more clearly. There is nothing to construe in such language. It is made mandatory that each county clerk follow the provisions of the general election laws of this state—unless Chapter 217 specifically provides otherwise—in carrying out his duties connected with the election of June 8th.

Section 567, Revised Codes of Montana, 1935, provides, among other things, for posting, not more than thirty

days before the election, of the printed registry list in at least five conspicuous places within each precinct. Nowhere in Chapter 217, Laws of 1943 did the legislative assembly provide Section 567 should not be followed; but, in fact, by enacting the above-quoted portion of Section 20 of the chapter, the assembly appears to have indicated an intention that the provisions of Section 567 be carried out.

For this office to say otherwise would be an infringement on the legislative authority.

It is true, of course, registration for the June 8th election will not close until May 28, 1943 (Section 16 of Chapter 217, Laws of 1943); and, therefore, any list of registered electors published in compliance with Section 567, Revised Codes of Montana, 1935, thirty days before the election will but rarely be a final list of those registered. Although such provisions within the same law appear to avail little, they do not unalterably create a conflict which necessitates ruling any part of Chapter 217 inoperative. In view of the fact such legislation as that here considered invariably comes before the Supreme Court before debentures are finally issued, all officers entrusted with the duty of conducting the election must be particularly vigilant in performing their duties, lest the finally expressed will of the people be voided by some administrative mistake. Surely, too, although failure to perform a duty will prejudice the rights of the electors, it is equally true that if each officer does exactly what the legislature has demanded, even though that appears to be more than necessary to the administrative mind—no one's rights can or will be prejudiced.

It is therefore my opinion the county clerks must cause to be posted, not less than thirty days before the election of June 8, 1943, at least five copies of the printed registry list in at least five conspicuous places within each precinct. Inasmuch as Chapter 217, Laws of 1943, does not prescribe otherwise, the registry list should be published in toto as for any other election—in compliance with Section 20 of Chapter 217, which requires the general election laws of the state be followed unless otherwise specifically prescribed by Chapter 217. In view of the fact registration for the June 8th election will not be closed at the time of such posting, the posted lists

naturally may show no more than the names of those registered at the time of printing.

Sincerely yours,
R. V. BOTTOMLY
Attorney General