

**Opinion No. 92.****Elections—Registration.**

**Held:** A returning veteran who failed to vote at the last general election must reregister in order to vote at the next general election. A returning veteran who had voted at the last general election either in person or by absent ballot would not have to reregister. In regard to re-registration, the construction of the phrase "every general election" as contained in Section 562, Revised Codes of Montana, 1935, as amended, must be said to apply only to the regular biennial general elections.

November 16, 1945.

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

Dear Mr. Mitchell:

You have submitted the following questions for an opinion:

Is it necessary for returning veterans to reregister if they are now registered on official war registration cards?

Is it necessary for a person who failed to vote at the general election held June 5, 1945, on Referendum Measure No. 49, and the election of a Representative to Congress from

the Second Montana Congressional District, to reregister before he can vote at the next general election?

Chapter 99, Laws of 1943, provides for registration of veterans on official war registration cards, and provides for veterans voting while members of the armed forces. A returning veteran, presumably a discharged veteran, would no longer come within the provisions of this act, as he would have severed his relationship as a member of the armed forces by consequence of his discharge.

Chapter 177, Laws of 1943, provides for the cancellation of registry for failure to vote, and a manner of re-registration thereafter. This act contains a provision pertaining to war registry cards and the procedure to be followed in the event an elector, by reason of his or her active service in the armed forces, is unable or fails to vote. This would only cover those in active service, and would not pertain to a discharged veteran. The question of reregistration involves only those who failed to vote at the last general election.

It is therefore my opinion that a returning veteran, one who has received his discharge from any branch of the armed services, who no longer comes under the provisions of the above quoted act, and who failed to vote at the last general election must reregister in order to vote at the next general election.

It is further my opinion that a returning veteran who had voted at the last general election either in person or by absent ballot would not have to reregister as his card would not have been removed from the register. Section 562, Revised Codes of Montana, 1935, as amended and quoted below, covers reregistration, and requires re-registration only for those who failed to vote in the last general election.

In answer to your second question, this office held in Opinion No. 37, Volume 21, Report and Official Opinions of the Attorney General, that the election to be held June 5, 1945 on Referendum Measure No. 49 was a general election. This opinion cited the case of *Arps v. State Highway Commission*, 90 Mont. 152, 350 Pac. 549.

Section 562, Revised Codes of Montana, 1935, as amended by Chapter 147,

Laws of 1937, and as amended by Chapter 144, Laws of 1941, and as now amended by Chapter 177, Laws of 1943, reads in part as follows:

"Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll books, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election . . ."

The question now presents itself as to whether this section pertains to re-registration for failure to vote at a general election on a referendum measure at which only those whose names appear could vote and at which all others, although qualified to vote at the general biennial election, could not vote. Such a construction would amount to disfranchising those registered voters not qualified to vote as a result of the property owner requirement.

The court, in the case of *School District No. 18 of Pondera County v. Pondera County*, 89 Mont. 342, 297 Pac. 498, stated:

"Presumption exists against construction of statute rendering it ineffective or which would cause grave public injury."

It can readily be seen that as a result of construing the election in question as a general election coming within the meaning of Section 562, as amended, pertaining to reregistration for failure to vote at a general election, the effect would be to disfranchise all voters who were not land owners, and as such, they could not by law have voted at the election of June 5, 1945 on Referendum Measure No. 49.

Section 2 of Article IX of the Montana Constitution provides for the qualifications of voters at general elections, and differentiates those qualifications from the qualifications of a voter at an election for the establishment of a levy or a tax. It would be injurious and result in undue hardship to compel voters to reregister following every election held generally throughout the state when in some of these elections,

those voters who have the qualifications for a voter at a general biennial election would be denied the right to vote.

The construction to be placed on the words "every general election" as contained in Section 562, as amended, *supra*, must be limited to mean the general biennial election at which anyone possessing the qualifications specified in Section 2 of Article IX of the Montana Constitution may vote. To hold otherwise would result in disfranchising many registered voters for no neglect or fault of their own.

Chapter 61, Revised Codes of Montana, 1935, contains the general provisions pertaining to registration of electors. Section 562, the section under discussion herein, as amended, is included within this chapter.

There is no indication that Chapter 61, Revised Codes of Montana, 1935, envisage or contemplated reregistration for failure to vote at an election, in which the property test was invoked in determining qualified voters, although it be deemed a general election for some purposes. There being no mention within this chapter of elections to assess levies, when voters at such elections must be property owners, it is apparent that the section in question pertains only to those voters qualified as general electors, within the provisions of Section 2, Article IX, Montana Constitution, which specifies the qualifications of a voter at general elections, separately adding qualifications when the election involves a levy, debt or liability.

It is evident that the application of Section 562, as amended, is to be limited to general elections open to all electors qualified as a result of citizenship and residence, and was not intended to include elections in which a property test was invoked in determining voter qualifications, and in which an additional poll book was utilized.

The court, in the case of *State ex rel. Eagye v. Bawden, et al*, 51 Mont. 357, 152 Pac. 761, stated:

"In the absence of any property test for voters, a person who possesses the qualifications enumerated in Section 2, Art. 9, of the Constitution, and who is duly registered, is entitled to vote without reference to his property holdings."

To require reregistration of voters failing to vote after an election at which the property test was applied would involve the reregistration of all voters not possessing property but otherwise qualified to vote at biennial general elections. Such interpretation would create havoc and certainly could not have been contemplated. The plausible interpretation would be that a qualified voter who failed to vote at the general biennial election must reregister.

It is therefore my opinion that in regard to reregistration, the construction of the phrase "every general election" as contained in Section 562, Revised Codes of Montana, 1935, as amended, *supra*, must be said to apply only to the regular biennial general elections.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General