

Opinion No. 133

**Secretary of State—Time Limit, for
Certificate of Nominations
Certification to County Clerks
County Clerks**

Held: The secretary of state is required to certify nominations required to be filed with him to the county clerks during the 30 day period beginning 60 days prior to and ending 30 days prior to the date fixed by law for an election to fill public office.

August 16, 1948

Hon. Sam W. Mitchell
Secretary of State
Capitol Building
Helen,a Montana

Dear Mr. Mitchell:

You have requested my opinion on the following question:

What is the time limit, in days, within which the secretary of state is required to certify nominations filed with him to the county clerks,

under the provisions of Chapter 64, Revised Codes of Montana, 1935, as amended, with particular reference to Section 618 as last amended by Chapter 259, Laws of 1947, and Section 619 as amended by Chapter 104, Laws of 1943?

Chapter 104, Laws of 1943, amending Section 619, Revised Codes of Montana, 1935, provides, in part:

"An Act to Amend Section 619 of the Revised Codes of Montana of 1935, Amending the Time of Certification of Candidates by the Secretary of State to the County Clerks in Order that Ballots May Be Printed in Adequate Time to be Voted and returned by men and women in The Armed Services of the United States and repealing all Acts and Parts of Acts in Conflict Herewith. . . .

"Section 1. That Section 619 of the Revised Codes of Montana of 1935, is hereby amended to read as follows:

"Section 619. Not less than forty-five (45) nor more than ninety (90) days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state."

Chapter 105, Laws of 1943, amending Section 618, Revised Codes of Montana, 1935, provides, in part:

"An Act to Amend Section 618 of the Revised Codes of Montana of 1935, Relating to the Time of Filing by Independent Candidates for Office in Order That Men and Women in the Armed Services May Have Sufficient Time to Procure and Return Their Ballots Prior to any General Election; Repealing All Acts and Parts of Acts in Conflict Herewith. . . .

"Section 1. That Section 618 of the Revised Codes of Montana of 1935, be, and the same is hereby amended to read as follows:

"Section 618. Certificate of Nomination to be Filed with the Secretary of State Must Be Filed Not Less than Ninety (90) Days Before

the Date Fixed by Law for the Election. . . ."

Chapter 259, Laws of 1947, the latest amendment to Section 618, Revised Codes of Montana, 1935, provides in part:

"618. When Certificate to be Filed. Certificate of nomination to be filed with the secretary of state must be filed not more than sixty (60) days and not less than thirty (30) days before the date fixed by law for the election. . . .

The title of Chapter 104 and 105, Laws of 1943, indicate the intention of the legislature to secure to men and women in the armed forces the opportunity to vote.

"The title of an Act is indicative of the legislative intent in passing it." (*Nangle v. Northern Pacific Rv. Co.* (1934), 96 Mont. 512, (a) 522, 32 Pac. (2d) 11).

To accomplish this end, Chapter 105 provided certificates of nomination must be filed with the Secretary of State not less than 90 days before the election, and Chapter 104 provided the Secretary of State should certify to county clerks nominations filed with him not less than 45 days nor more than 90 days before the election involved. The procedure was designed to have ballots printed and in the mails early enough so those in service in various parts of the world could vote and return their ballots.

With the cessation of active hostilities prior to the meeting of the 1947 legislature, Chapter 259, amending Chapter 105, Laws of 1943, directed the certificates of nomination be filed with the secretary of state not more than 60 days and not less than 30 days before the date of election. Thus, the legislature took cognizance of the return to the state of most of our service people.

But, Chapter 104, Laws of 1943, went unamended. As a result, certificates of nomination could be filed with the secretary of state for a period not more than 60 days nor less than 30 days before the election under Chapter 259, Laws of 1947. Under Chapter 104, Laws of 1943, the secretary of state could not certify nominations to county clerks for comple-

tion of the ballot more than 90 days nor less than 45 days before the election to fill a public office.

As a result of the differences between Chapter 259, Laws of 1947, and Chapter 104, Laws of 1943, candidates would be permitted to file their certificates of nomination with the secretary of state only during the 30 days period beginning 60 days prior to election and ending 30 days prior to election. However, the secretary of state could certify nominations to the county clerk for placing candidates' names on the ballots only for the 45 day period beginning 90 days prior to the election and ending 45 days prior to the election. The secretary of state would be required by Chapter 104, Laws of 1943, to certify nominations to the county clerks 45 days prior to the election, but Chapter 259, Laws of 1947, requires the secretary of state to accept certificates of nomination for filing in his office 30 days prior to the election. Thus he could not certify such nomination for the last 15 days of the period during which certificates of nomination could be filed in his office. The effect would be to cut the period for filing certificates of nomination with the secretary of state to 15 days, that is, for a period beginning 60 days prior to election and ending 45 days prior to election.

Clearly, the legislature did not intend this result in enacting Chapter 259, Laws of 1947. The 30 day period for filing certificates of nomination above described was clearly expressed. Reason dictates that a like period exist for certification by the secretary of state to the county clerks, else only those fortunate enough to file certificates of nomination during the first 15 days of the period could have their names certified to the county clerks.

Section 8739, Revised Codes of Montana, 1935: "When the reason of a rule ceases, so should the rule itself."

"The rule established by constitutional provision as well as by the statute must be strictly enforced, provided the reason underlying it is present; whenever the reason for it ceases, so does the rule."

Broadwater v. Kendig (1927), 80 Mont. 515, 523, 261 Pac. 264.

The reason for the enactment of Chapter 104 and 105, Laws of 1943, as expressed in their titles, ceased to exist, in the view of the legislature, by its expression in the enactment of Chapter 259, Laws of 1947.

Although Chapter 104, Laws of 1943, was not expressly repealed, it is repugnant to the operation and meaning of Chapter 259, Laws of 1947, the reason for it is past, and its implied repeal results. Earlier statutes, "to the extent of any repugnancy . . . are controlled by the later statutes." (State ex rel. Wiley v. District Court, 164 Pac. (2d) 358, 361, (Mont., 1945).

The recent case of State v. Hall, (Mont. 1948), 194 Pac. (2d) 651, 657, reiterates the familiar rule on implied repeals:

"While it is said repeals by implication are not favored and if possible conflicting provisions of statutes should be reconciled where the inconsistency is such as plainly may not be reconciled, the courts do not hesitate to declare the earlier statute repealed by the later legislative expression."

It is, therefore, my opinion the secretary of state is required to certify nomination required to be filed with him to the county clerks during the 30 day period beginning 60 days prior to and ending 30 days prior to the date fixed by law for an election to fill public office.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General