Opinion No. 73

Elections — Computation of Time for Filing Nominating Petitions — Statutes

HELD: The time for filing petitions for nominations for county and state offices is computed by excluding the first day and including the last, unless the last day is a holiday, then it is also excluded.

April 21, 1956

Honorable S. C. Arnold
Secretary of State
Capitol Building
Helena, Montana

Dear Mr. Arnold:

I have your request for my opinion on the closing day for filing nominating petitions for state and county office. You ask whether April 25th or April 26th is the correct closing

date in view of State ex rel. Burns vs. Lacklen, ... Mont. ......, 284 Pac. (2d) 998, decided in June of 1955.

Section 23-912, R.C.M., 1947, covers the time for filing petitions for nomination. It reads as follows:

"Time For Filing Petitions For Nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) 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 (40) days before the date of the primary nominating election; and for other offices to be voted for in only one (1) 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 forty (40) days before the date of the primary nominating election."

Section 90-407, R.C.M., 1947, tells how legal time is to be computed. It provides:

"Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

Although the latter statute clearly seemed to control, our Supreme Court held in State ex rel. Bevan vs. Mountjoy, 82 Mont. 594, 268 Pac. 558, that it was not applicable. As a result they construed the legislative intent to be that "only the clear days are meant", thus excluding both the beginning and last days in computing forty days.

The Lacklen case mentioned above dealt with the nomination and election of school trustees under a statute (Section 75-1606, R.C.M., 1947) which provided for nomination of trustees "not more than sixty (60) days nor less than forty (40) days before the day of election." In com-

puting the time in this case the court expressly overruled the Bevan vs. Mountjoy case, cited above, and, quoting from Kelly vs. Independent Pub. Co., 45 Mont. 127, 122 Pac. 735, stated that the purpose of Section 90-407 "was to establish a general rule for the computation of time, in order that confusion may be avoided and harmony prevail."

The court noted that confusion came when the court departed from the statutory rule and excluded both terminal days in computing time. With the Lacklen case they acknowledged their prior error in these words:

"Courts are not inclined, any more than men out of courts, to admit that they have erred but where the court has fallen into error upon a question controlled and determined by a valid, unambiguous statute with which certain of this court's decisions are in direct conflict then it becomes the plain duty of the court to retrace its steps and overrule such clearly erroneous decisions. Accordingly the St. George, Bevan, Novack and Sullivan cases, supra, are overruled."

Any doubt is removed by this statement of the court:

" . . . State ex rel. Bevan v. Mountjoy, 82 Mont. 594, 268 P. 558; Novack v. Pericich, 90 Mont. 91, 300 P. 240, and State ex rel. Sullivan v. District Court, 122 Mont. 1, 196 P. 2d 452, all of which ignore and reject the valid written law of this jurisdiction duly and regularly enacted by the legislative department and assume to adopt and declare another and different rule of computation that has no legislative sanction whatever and that is entirely out of harmony with the provisions of the statute, Section 90-407, supra, which sets forth and is the written law of this jurisdiction."

It is therefore my opinion that for the purpose of Section 23-912, R.C.M., 1947, the time is computed by ex-

cluding the first day and including the last, unless the last day is a holiday, then it is also excluded.

> Very truly yours,
> ARNOLD H. OLSEN,
> Attorney General.