

Incorporation of Towns. Elections for Incorporation, Voters At.

At an election held under Section 4721, Political Code, to vote upon the question of incorporating a town, only the qualified electors whose names appear on the last general registration list of the precinct or precincts embraced in the territory described in the petition for incorporation have a right to vote at such election.

Helena, Montana, March 22nd, 1906.

Hon. A. J. Walrath, County Attorney, Bozeman, Montana.

Dear Sir:—Your letter of the 13th inst., received, inclosing a copy of

the opinion given by you to the County Clerk of your county and also requesting an opinion of this office upon the questions discussed in your opinion.

It appears from the facts presented in your letter and opinion that the residents of Belgrade have petitioned the county commissioners of your county to submit to the electors of the town of Belgrade the question of incorporating said town, and that, pursuant to such petition the county commissioners have ordered an election to be held on March 27th for the purpose of voting upon this question.

The question now presented is whether all the qualified electors, regardless of previous registration, who reside within the limits of the territory described in the petition for incorporation may vote at such election, or only those qualified electors whose names appear upon the last registration books of the precinct or precincts which included the town of Belgrade?

This question was passed upon by this office in an opinion given to the County Attorney of Sweet Grass County on July 26th, 1902, in which it was held that only such persons as had been registered at the last general registration were entitled to vote upon the question of incorporating the town.

However, we have again taken up the question and made a full investigation of the law regarding the same. It seems to be the general policy of the law of this state to require all persons to be registered before they may exercise the right of suffrage upon any question submitted to a vote of the people. Sec. 9 of Art. 9 of the Constitution provides that "the legislative assembly shall have the power to pass a registration, and such other laws, as may be necessary to secure the purity of elections and guard against the abuse of the elective franchise." Pursuant to this provision of the constitution, the legislature enacted Sec. 1181 of the Political Code, which provides that; "Every male person of the age of 21 years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are or hereafter may be elected by the people, and upon all questions which may be submitted to a vote of the people." By Sec. 1222 of the Political Code it is further provided that "At any special election held for any purpose in any county, copies of the official register and check list which were printed or written before and used at the next preceding general election must be used, and no new registration need be made."

These sections are comprehensive and make no exception whatever. The only exception made being the one found in Section 1221, which provides that "nothing in this chapter must be construed to affect the laws regulating the registration of voters in municipal elections."

It is clear, however, that the election held for the purpose of voting upon the question of incorporating a town is not a municipal election, for it is ordered by the board of county commissioners and the municipal corporation does not come into existence until after the proposition to incorporate the town has been carried at such election and the result duly declared by the board of county commissioners.

The question then arises: Does an election for the purpose of incorporating a town come within the meaning of "special elections," or within the meaning of the phrase "upon all questions which may be submitted to a vote of the people", as found in said Section 1181, and does it come within the meaning of the phrase "special election held for any purpose in any county", as used in said Section 1222?"

If such an election is within the meaning of said Sections 1181 and 1222, it is perfectly clear that only such persons as have been registered and whose names now appear upon the registration list of the precinct or precincts covering the territory now proposed to be incorporated have a right to vote upon the question of incorporation.

Turning to Section 4721 of the Political Code, which provides for an election to vote upon the question of incorporating a town, we find the following provision: "And all elections must be conducted as provided in Title 2, Part 3 of this Code." It will be noticed that this clause of said Section 4721 does not say that the election must be conducted (so far as applicable), as provided in Title 2, Part 3, of this Code, but simply provides without any exception whatever that the elections must be so conducted. If said Section 4721 did not state how the election was to be conducted, it might be held that said Sections 1181 and 1222, by reason of their general language, would apply to such an election, but, by expressly providing therein that all the elections for the purpose of voting upon the question of incorporation must be conducted under the general election law as defined by Title 2, Part 3 of the Political Code, we must, of course, determine the manner of conducting this election by the provisions of said general election law. There can be no question but what the registration of voters is part of the conduct of an election. One of the first steps in the conduct of an election is the appointment of registry agents and the registration of voters. Another step in the conduct of an election is the examination of the registration book by the clerks of an election to see if the name of the man who offers to vote appears thereon before his ballot is received. Therefore, if in an election held for the purpose of voting upon the question of incorporation a man should offer to vote whose name did not appear upon the registration list, and such vote was received by the judges of election, it is clear that this procedure would not be conducting an election as provided in Title 2, Part 3 of the Political Code.

McCreary on Elections, Sec. 126, says: "It is within the province of the legislature to prescribe reasonable rules and regulations for the conduct of elections, including reasonable provisions for the registration of voters."

As to the meaning to be given to the word "conduct", as used in said Section 4721, see *Blake v. Walker*, 23 S. C. 525.

We are, therefore, of the opinion that under the last clause of said Section 4721, elections held for the purpose of voting upon the question of incorporating a town are governed by all the general provisions of Title 2, Part 3 of the Political Code and that said Sections 1181 and 1222 govern the conduct of such an election, and no person is entitled to vote at such an election unless he is now a resident within the limits of the

proposed incorporation and whose name appears upon the registration books of the precinct or precincts in which the territory proposed to be incorporated is situated.

The opinion given by you to the county clerk upon this question is, therefore, affirmed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.