

**Registration, Period Of. Primary Election Law, Effect Upon  
Registration.**

Under Sec. 1206 of the Pol. Code, as amended by laws of 1899, page 54, there must be a general registration of all voters every eight years beginning with the year 1898, therefore, every elector must register this year in order to exercise the right of voting at the coming election.

Under Sec. 1206 of the Pol. Code as amended by Sec. 14 of the Primary Election Law, Chap. 99, Laws of 1905, the period for registration of electors in counties having adopted such primary

election law begins on July 15th, and ends on August 15th. Electors not registering during such period cannot vote, as there is no provision for the swearing in of voters, or opening of the registration books in such counties after August 15th.

Helena, Montana, July 26th, 1906.

Hon. J. A. Matthews, County Attorney, Townsend, Montana.

Dear Sir:—Your letter of the 24th inst., submitting the following questions for an opinion, received.

1. Under the provision regarding eight year registration periods, is each elector required to register, regardless of length of time since he last registered, at this time; that is, does the law contemplate that at the end of each eight years every man in the county shall register, even though he may have registered but two years ago, or shall each man—each individual register once in eight years?

2. Registration books close the fifteenth of August; are all electors who may come into the county between the fifteenth day of August and the first of October, and who, except for the registration, are qualified voters, barred from voting at the general election, or will there be such a thing as swearing in votes?

In answer to question No. 1, you are advised that every elector must register this year in order to be entitled to vote at the ensuing elections. The proviso contained in Sec. 1206 of the Pol. Code as amended is to the effect that there shall be a general registration of all voters every eight years beginning with the year 1898, so it makes no difference whether a man was registered two years ago or as far back as 1898, he must register again this year.

In answer to question No. 2, you are advised that the amendment of said Sec. 1206 made by Sec. 14 of the Primary Election Law is an unqualified amendment of such section, and that, therefore, the only time allowed for the registration of electors in counties having adopted the primary election law is during the period mentioned in said section 1206 as amended by such primary election law, namely, between July 15, and August 15. There is absolutely no provision in our law for the swearing in of voters or opening of the registration books for the benefit of those who are not registered during the period designated in said amended Section 1206.

The question, of course, arises as to what effect such amendment of Section 1206 will have upon electors who move into a county that has adopted the primary election law, after August 15, and who will have been residents of the county thirty days prior to the general election in November.

Sec. 2 of Article 9 of the Constitution, in fixing the qualifications of electors provides:

“That they shall be citizens of the United States, residents of the State one year immediately preceding the election, and residents of the county or precinct such time as may be prescribed by law.”

Under this section of the constitution it is clear that the legislature may fix the length of time of residence in the county necessary to entitle

a person to vote at such period as they may see fit, so long as the time does not conflict with the provision that a person who is a resident of the state one year may vote.

Section 9 of said Article 9 of the Constitution provides that:

"The legislative assembly shall have the power to pass registration and such other laws as may be necessary to secure the purity of elections and guard against abuse of the elective franchise."

This section confers the authority upon the legislative assembly of dealing with the question of registration of voters.

In Sec. 1181 of the Political Code the legislature prescribes the time that a person must reside in the county in order to vote therein, and fixes the same at thirty days. With this limitation, however, that "his name is registered as required by law." Therefore, although a person may be a citizen of the United States, a resident of the state one year, twenty-one years of age, and have resided in the county thirty days; he is not entitled to vote at an election unless his name is registered as required by law, and, as already stated, the constitution has given the power to the legislature to say when electors shall be registered and to fix the time after which they cannot register. The power having been given to the legislature by our constitution to enact reasonable regulations regarding the registration of voters, and also to prescribe the period of residence in a county before a person may vote therein; it is not for us to say whether the period fixed for registration is an unreasonable one or not. While the legislature has prescribed that a person possessing the other qualifications may vote in a county after residing there thirty days, provided he is registered, the legislature has equal authority under the constitution to prescribe when registration shall begin and close, and therefore, the thirty day period of registration may be materially modified by other laws fixing the period during which registration of electors may be had.

In the case of *People v. Hoffman*, 116 Ills. 614, the supreme court, in discussing the question of whether a registration law deprived electors of the right to vote who were not able to register during the period of registration, used the following language:

"If the legislature has the power to direct the registry to be completed before election day, and if, in its wisdom and under a sense of its responsibility to the people, it has said that three weeks before election is a reasonable date for the completion of the registry, shall this court substitute its judgment for that of the law-making power, and say that a shorter time would have been more reasonable?"

"The moment a court ventures to substitute its own judgment for that of the legislature, in any case where the constitution has vested the legislature with power over the subject, that moment it enters upon a field, where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference. The judiciary can not run a race of opinions upon points of right, reason and expediency, with the law making power." *Cooley's Const. Lim.* 168.

In *Prettyman v. Supervisors*, 19 Ills. 406, the court said: "If a law is unwise, the legislature is responsible, and it is for their constituents

to apply the corrective, and not for the courts, for that reason, to hold it void. We can only look to their power to act under the constitution, and not to the effects of their exercise of constitutional authority, in determining the validity of their acts."

See also :

McCreary on Elections, Secs. 130 to 132.

Cyc. Vol. 15, Elections, p. 308.

We must, therefore, hold that the period of registration in counties having adopted the primary election law closes on the 15th of August, and that electors not registered during that period, or who move into the county after that period and thirty days before the election in November cannot be registered, and, therefore, will have no right to vote.

Of course, Sec. 1200, as amended by the Primary Election Law, does not apply in counties not adopting such law, therefore the registration of electors in counties not adopting the Primary Election Law is regulated by the provisions of said Sec. 1206 as amended by the laws of 1909, p. 54.

Very truly yours,

ALBERT J. GALEN,

Attorney General.