

Direct Primary Law Voting at Primary Election, for Persons Not Nominated.

Under the provision of Chapter 99, Laws of 1905, page 198, there is no objection to an elector voting at the primary election for a person for particular office who has not been regularly nominated and whose name is not heretofore printed upon the official ballot; and such votes should be counted for such candidate the same as though his nomination had been filed with the County Clerk, and his name printed upon the ballot in accordance with the provisions of the law.

Helena, Mont., August 20, 1906.

Harry L. Wilson, Esq., County Attorney, Billings, Mont.:

Dear Sir—I am in receipt of your favor of the 16th inst., requesting an opinion of my office respecting a question arising under the direct primary law.

The question you present may be summarized as follows: Is it proper for electors to vote at the primary election for persons who have not been nominated by petition, as provided for in the law, and whose names do not appear printed upon the official ballot, and is it possible for persons so voted for to receive a nomination for office?

Sub-division 1 of Sec. 5 of the Act (Chap. 99, Laws 1905, page 199) provides "the name of no candidate shall be printed upon any official ballot used at any primary unless at least thirty days * * * * * prior to such primary, a nomination paper shall have been filed in his behalf as provided in this act."

Section 9 reads in part as follows:

"The names of all candidates for the respective offices for whom the nomination papers prescribed shall have been duly filed, shall be printed thereon." And, further, in the form of ballot prescribed by this section, at the very head thereof, we find the following language used: "To vote for a person whose name is not found on the ballot, write or paste his name in the space provided for that purpose." And by the provisions of Sections 12 and 22 of the Act, the general election laws of the state, as far as applicable, govern in the preparation of marking the ballot.

The general law upon this subject is Section 1361 as amended by the laws of 1901, page 119, and it provides: "The elector may write in

the blank space, or paste over any other name, the name of any person for whom he wishes to vote." (See also, Sec. 1351 Pol. Code.)

In view of these provisions of the law, I think it perfectly plain that a person cannot have his name printed on the primary election ballot as a candidate for any office, unless his nomination has been duly and regularly filed, as provided for in the law, but there is nothing in the law to prevent an elector from voting for whomsoever he may please as a nominee for any particular office, whether such person has been regularly nominated and his name printed upon the ballot or not. Therefore, following the illustration which you present for my consideration in your letter: G. Herman Smith being the only candidate for the office of coroner, in the event of a majority of the voters for a candidate for such office writing in the name of John Doe in the blank space below Mr. Smith's name, or of their pasting a sticker over the name of Smith, upon which sticker is printed the name of Doe, and then voting for Doe by making a cross opposite his name, Doe would be the party nominee for such office. And in the case of the office of County Surveyor, there being no nominee for such office, the person receiving the greatest number of votes for such office, being voted for by either the use of stickers or the writing in of his name upon the ballot, would be the party nominee for such office. The electors cannot be deprived of their right to choose a man, who, in their judgment, is best fitted for any particular office merely because of the fact that his nomination has not been prepared and filed, and his name printed upon the ballot according to the provisions of this law. Yours truly,

ALBERT J. GALEN,
Attorney General.