

Primary Election Law. Registration of Voters. Constitutionality of Law.

The Board of County Commissioners have no right to ignore the primary election law on the ground that the same is unconstitutional, and thereupon reopen the registration books in accordance with the general election law of the state.

Until the primary election law is declared unconstitutional by the courts, it is the duty of the county commissioners to follow the provisions thereof.

Helena, Montana, Oct. 2, 1906.

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

Dear Sir:—Your letter of the 29th ult., requesting an opinion from this office received, the question submitted being as follows:

“Have the Board of County Commissioners the right to ignore the primary election law on the ground that the same is unconstitutional and reopen the registration books of the county in accordance with the general election law, appoint registration agents and proceed to register voters at the time designated in Section 1206, before the same was amended by the primary election law?”

The opinion given by this office to you on July 26, 1906, practically answers your question. In that opinion we said:

“In answer to question No 2, you are advised that the amendment of 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 Sec. 1206.”

In that opinion we discussed the constitutionality of the law and held that in the light of constitutional provisions regarding the registration of voters we would not be justified in holding the law unconstitutional. The rule laid down by the Supreme Court in this state is that a law will not be declared unconstitutional unless it appears so beyond a reasonable

doubt. It is the duty of all public officials to uphold the constitutionality of laws enacted by the legislature if it is possible so to do.

You will, therefore, advise the board of county commissioners that they have no right or authority to consider the primary election law unconstitutional, and that, unless such law is declared unconstitutional by the courts, the board has no authority whatever to reopen the registration books, appoint agents and make a new and additional registration of voters at this time.

Very truly yours,

ALBERT J. GALEN,

Attorney General.