

1. Sanders County, Election For County Seat Of, Method of Voting.

The law creating Sanders County (Chap. 9, Laws 1905, p. 18), is a special law dealing particularly with the method of voting for the county seat of Sanders County, and its provisions should be strictly followed at the election.

2. Sample Ballots.

Sample ballots are usually prepared and distributed by the central committees of political parties, but cannot be used by electors in the polling places.

3. Officers of Sanders County, Time of Qualification Of.

The officers of Sanders County elected at the general election 1906 will qualify on the first Monday in January succeeding the election.

4. Clerk of the District Court, Election For in Sanders County.

The Clerk of the Court of Sanders County having been appointed by the legislature to hold only until the next general election, an election of a person to fill this office should be held this year.

Helena, Montana, October 17, 1906.

H. C. Schultz, Esq., County Attorney, Thompson, Montana.

Dear Sir:—I am in receipt of your favor of the 12th inst. submitting for official opinion nine questions relating to the general election to be held in Sanders County this fall.

I have given said questions careful and studied consideration and here set them forth and answer them in the order presented.

1. Is Sec. 3, Chap. 9, Laws of 1905, a special law to govern the manner of voting for the county seat by merely writing in the blank space the name of the town, or is an X required opposite the answer of the question or proposition, as provided in Sec. 1361, P. C.?

Section 1361 of the Political Code as amended by the laws of 1901, p. 119, should be eliminated from consideration in determining the procedure in voting for the county seat of Sanders County at the general election to be held this fall for the reason that Chapter 9, laws of 1905, p. 18, is a special law enacted later, and deals with the particular subject. Therefore, following the directions of Section 3 of said Act of 1905,

electors will designate their choice of a town for the county seat "by inserting in the blank space upon their ballots * * * the name of some one town within said county, * * * and when the name of the town shall be so inserted in said space by an elector, and the ballots have been cast * * * the same shall be deemed a vote for the designated town as the place of the permanent county seat", etc. It will be seen from the language above quoted that it is only necessary for the elector to insert in the blank space provided on the ballot, the name of his choice of a town for the county seat, and nothing further is necessary or required of him to denote his choice. It is not necessary for him to also mark a X opposite the name of the town by him so inserted upon his ballot, but were he to do so his vote would not be in any way affected. The elector may designate his choice of a town by inserting the name thereof in the blank space provided on the ballot, either by writing in the name, or by using a sticker upon which the name of the town is printed, or by using a stamp, for the law only requires that the name shall be inserted in the blank space provided on the ballot without designating the particular manner of such insertion.

2, 3 and 5. The answer given you above to your question No. 1 eliminates from further consideration your questions No's 2, 3, and 5 and fully answers them.

"4. Are sample ballots permitted by said Sec. 1351, P. C.? If so, by whose authority and to what number issued?

Sample ballots are not prohibited by said Section 1351 P. C., otherwise, or at all, but electors are by law prohibited from taking or using sample ballots in the polling place. Sample ballots are usually prepared and distributed by the central committee of political parties in such numbers as may seem desirable."

"6. Does Sec. 10, Chap. 9; laws of 1905, permit the newly elected officers of Sanders County to take office as soon as elected and qualified. or does Sec. 4318, P. C. govern as to time when said newly elected officers shall take their offices?

Section 1513 of the Political Code governs and is controlling as to the time when the newly elected officers of Sanders County shall enter upon the performance of their duties. Section 10 of such Chapter 9, laws of 1905, provides that the officers named in the Act shall "perform the same duties, and be entitled to the same privileges as are by law conferred upon like officers in other counties, and shall hold their respective office until after the next general election, or until their successors are duly electe and qualified."

Under the provisions of Section 4315, all officers elected at the general election cannot qualify until the first Monday in January next succeeding their election. This is perfectly apparent by virtue of the fact that by the act itself, all laws of a general nature applicable to the several counties of the State of Montana and the officers thereof are made applicable to Sanders County and its officers who may thereafter be elected, except as in the act otherwise provided (See Sec. 3), and also by virtue of the fact that under Sec, 10 of said Act the officers are expressly given the same powers and privileges as are by law con-

ferred upon like officers in other counties. Moreover, any other construction of the law would bring about great confusion.

"7. Does Sec. 10, Chap. 9, laws of 1905 intend there shall be an election this November for the office of Clerk of the District Court, or does Sec. 18, Art. 8, State Constitution govern on that point.

Section 18, Article 8 of the State Constitution provides "There shall be a Clerk of the District Court in each county who shall be elected by the electors at the same time and for the same term as the district judge"

Sec. 12 of said Article 8 provides that district judges shall be elected for four years, except that judges first elected under the constitution shall hold office until the general election in the year 1892. It therefore follows that the time for election of district judges has been every four years since 1892; that is, at the general elections of 1896, 1900, and 1904, and the next election for district judges will be in 1908, and, according to said section 18 of said article, the time for the election of clerks of district courts must be the same as that for district judges.

Sec. 34 of the same article provides that "a person appointed to fill any such vacancy shall hold office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected."

Under this section the term of office of persons appointed by the governor or county commissioners to fill vacancies can only extend until the next general election and until their successors are elected and qualified.

As to whether the term of office of persons appointed by the legislature to fill office created by it would, by reason of constitutional provisions, extend only until the next general election and until their successors are elected and qualified need not be considered in this case for the reason that the act creating Sanders County by section 10 thereof, expressly declares that the officers named therein, which includes the clerk of the district court, "shall hold their respective offices until after the next general election"—which will be November 6th, 1906.

And it follows, of course, from what is said above that if the clerk of the district court is duly elected at the next general election and qualified, he will hold office only until the expiration of the regular term of clerks of district courts, as provided in the constitution; that is, until the first Monday of January, 1909.

You are therefore advised that the names of candidates for the office of clerk of the district court should be placed upon the official ballot to be used at the next general election in Sanders County.

"8. Should the governor fail to make proclamation for an election for the office of Clerk of the District Court and the County Clerk for that reason refuses to place names of nominees for that office upon the official ballot, against which official could mandamus be properly brought?

If the county clerk for any reason refuses to place the names of candidates for such office upon the official ballot, he is the proper party against whom to institute mandamus proceedings.

9. Question 9 regarding the term of office of officers elected at the

ensuing general election is fully covered and answered by the answer herein given you to question 6.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.

Registration, Right of Elector to Vote.

An elector being properly registered in his registration district may vote in the precinct where his name regularly appears on the list, even though he may reside in a different precinct.

Helena, Montana, November 6, 1906.

S. V. Stewart, Esq., County Attorney, Virginia City, Montana.

Dear Sir:—By telephone you have submitted the following question for my decision, to-wit:— An elector residing in a certain registration district, having registered in a precinct other than that in which he resides and offers to vote, although in the same district, should he be disfranchised?

After careful consideration of the question presented, you are advised that such elector should be permitted to vote in the precinct where his name appears registered. The law does not require residence in the precinct for any length of time as a condition precedent either to the right to vote or register, and if properly registered in the registration district, and possession the other necessary qualifications the elector should not be denied the right to vote in the precinct where his name regularly appears on the registration list. If the elector desired to vote in his own precinct within the registration district, he should have had the change made on Saturday last, when the books were open for correction.

ALBERT J. GALEN,

Attorney General.

By telephone.