

Municipal Corporations. Towns, Incorporation Of. Elections to Incorporate Towns. Tie Vote.

Where an election held for the purpose of incorporating a town results in a tie vote the board of county commissioners has no authority to call another election except upon the filing of a new petition.

Helena, Montana, Jan. 30, 1908.

Hon. John L. Slattery,
County Attorney,
Glasgow, Montana.

Dear Sir:—

I am in receipt of your letter of the 21st. inst., in which you submit for the consideration of this office the proposition,

“Where an election held for the purpose of incorporating a municipal corporation results in a tie vote, have the county commissioners the authority to call another election on a petition filed pursuant to Sec. 4720 Pol. Code?”

At an election of this kind the real question submitted to the electors is “Shall the town be incorporated?” though the form of the ballots used is “For Incorporation,” and “Against Incorporation.” In order to carry the proposition a majority or plurality of the votes must be cast in favor of incorporating (Sec. 1178 Pol Code.) and if the election results in a tie vote the former conditions prevail and the proposition to incorporate is defeated as effectually as though a majority or plurality vote had been cast against it. Hence the election provided for in said Section 4720, Pol. Code, has been held and the petition filed in accordance with said section has become functus officia. It is fundamental that the board of county commissioners has no power except what is given by statute, and this statute does not confer upon the board the authority to call another election on the same petition where the first election has resulted in a tie vote. Had there been no election held by reason of some occurrence which prevented it after the call had been made, then the board would probably have the authority to call an election. But in this case the election was actually held, and by reason of the fact that the legislature did not confer upon the board the authority to call another election in case of a tie vote, we must presume that it was the legislative intent that such power should not be exercised by the board. Hence we would deem it exceedingly dangerous for the board to attempt to call another election without the filing of a new petition.

You are therefore advised that the filing of a new petition is necessary to confer jurisdiction upon the board to call another election.

Very truly yours,

ALBERT J. GALËN,

Attorney General.