

Towns, Election of First Officers. Elections for First Officers, Incorporated Towns. Electors, Qualifications of, General Election.

Under Section 4722, Political Code, all qualified electors of the State who have resided in the town six months and in the ward thirty days are entitled to vote at the first election for officers of the newly incorporated town.

Helena, Montana, May 12, 1908.

Hon. W. L. Ford
County Attorney,
White Sulphur Springs, Montana.

Dear Sir:—

Your letter of the 8th inst. received, in which you request an opinion upon the following question:

After a town has voted for incorporation in accordance with the provision of Section 4721, Political Code, and the county commissioners have given notice of the time and place of holding the first election for officers of such municipal corporation as provided by Section 4722, who are qualified electors and entitled to vote at such first election for officers of the corporation?

In an opinion given by this office to one A. J. Walrath, county attorney of Gallatin county (Opinions of Attorney General 1905-06, page 314), and referred to in your letter, it was held that only those electors who were registered in accordance with the general election laws of the state could vote on the question of incorporation.

As to who are qualified electors at the first election for officers of the corporation, presents an entirely different question. Said Section 4722 provides that at such first election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months and within the limits of the ward for thirty days preceding the election are qualified electors and may choose officers for the city or town.

In our opinion this provisions of said Section 4722 was intended to designate just who were entitled to vote at the first election for officers and that therefore the general election law of the state does not apply to such election, nor does the registration law of the county apply, for the reason that this is not a county election, but strictly a municipal election. No registration of such electors is required for the reason that the law does not provide for the registration of voters in municipal elections, but by Section 4754, Political Code, authorizes the council of the city or town to provide by ordinance for the registration of electors, but, of course, as there is no council in existence until after the first municipal election, it is impossible for such provision to be made.

Therefore, in our opinion, all electors qualified by the general election laws of the state and who have resided within the limits of the city

or town for six months and within the limits of the ward for thirty days preceding the election, are entitled to vote at such first election without first having registered. Of course, if any person should offer to vote, who in the opinion of the judges did not possess the required qualifications, it would be their duty to challenge his vote, and he would be required to make oath to the fact that he possesses the above qualifications before he would be entitled to vote.

Very truly yours,

ALBERT J. GALEN,
Attorney General.