

Elections, Arrangement of Ballots. Ballots, Printing and Arrangement Of.

Under Section 542, Revised Codes, it is the duty of the county clerk to provide for the printing of the ballots, and it is in his discretion to arrange the order of the political parties on such ballot.

Helena, Montana, October 20, 1908.

Hon. W. E. Brandenburg,
County Clerk,
Bozeman, Montana.

Dear Sir:—

Your letter of the 19th inst. received, in which you request an opinion upon the following question:

Has the county clerk the right to arrange the ballot as he sees fit; that is to say, can he place any one of the political parties in the front of the ballot?

The board of county commissioners claim that the printing of the ballot is in their charge, as they have to pay the bills, and that therefore they have the right to arrange the order of the ballot.

Section 542 (Revised Codes, 1351 Political Code) reads as follows:

“County Clerk to Print Ballots. Elector May Vote for Any Person.—Except as in this chapter otherwise provided, it is the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county clerk in the manner provided for in this chapter.”

This section clearly makes it the duty of the county clerk to provide the printed ballots and to cause to be printed on the ballot the name of every candidate who has been properly certified.

The county clerk is a constitutional officer and in the regular performance of duties imposed upon him by law he undoubtedly has the right to use his discretion in the performance of such duties, so long as he does not violate any provision of the law in the exercise of such discretion. The county commissioners have no more control over the regular performance of his duty in this matter than they have in the performance of any other duty imposed upon the county clerk. The county of Gallatin and not the board of county commissioners pays for the printing of the ballots.

Section 2594, Revised Codes, gives the county commissioners jurisdiction and power, under such limitations and restrictions as are prescribed by law, to supervise the official conduct of all county officers, and to see that they faithfully perform their duties, but it does not give the commissioners authority to interfere with a county officer so long as he is faithfully performing the duties expressly imposed upon him by law. The county commissioners have no power other than that derived expressly, or by necessary implication, from the statute defining their powers.

State vs. Coad, 23 Mont. 137.

We know of no statute expressly conferring authority upon the board of county commissioners to arrange to print the official ballot. You are therefore advised that it is your duty to provide for the printing of the official ballots, and that you can arrange the same in any manner that you see fit, so long as you do not violate the provisions of Section 545, Revised Codes, which provides the manner in which the ballots must be printed.

Very truly yours,

ALBERT J. GALEN,

Attorney General.