

Ballots, duty of county clerk to prepare. County Clerk, duty of to prepare ballots for election. Printing Ballots, expense Of.

It is the duty of the county clerk to prepare and distribute the ballots to be used at every election within the county and to properly place thereon the names of the candidates for the various offices. Where the county clerk fails to do this and thereby entails additional expense in the printing and distributing of pasters the county should not bear the added cost.

Helena, Montana, November 14, 1908.

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

Dear Sir:

Your letter of November 11th, 1908, requesting an opinion of this office as to the liability of Valley County for the printing and distribution of pasters by the county clerk and recorder of that county for the purpose of correcting and completing the ballots used at the last general election received.

Section 1317 of the Political Code makes it the duty of the secretary of state to certify to the various county clerks the names of the candidates for each office for whom the electors are entitled to vote "not less than twenty, nor more than thirty days before the election." Section 1320 of the same code provides that if any person so nominated dies before the printing of the tickets * * * the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. And, further, the same section provides:

"When such certificate is filed with the secretary of state he must in certifying the nominations to the various county clerks insert the name of the person who has thus been nominated to fill the vacancy in place of the name of the original nominee. And in the event he has already transmitted his certificate, he must forthwith certify to the clerks of the proper counties the name and description of the persons so nominated to fill the vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom said nomination is substituted." The provisions of these two sections of the Political Code were followed by the secretary of state; Sec. 1320 being complied with by the transmission of the letter to the county clerk, which you say arrived at the postoffice at Glasgow on the 21st day of October, prior to the printing of the ballots which was done on the 29th day of October. The deputy clerk and recorder took the letter from the postoffice not later than October 23rd, which was six days prior to the printing of the ballots. This, however, you say, did not come to the notice of the clerk and recorder until the 30th day of October, at which time he caused pasters to be printed, containing the name of Charles S. Hartman, and also caused a messenger to be sent to several of the outlying precincts in order to have the pasters placed on the ballots before they were delivered to the voters.

Sec. 1351, Political Code, makes it the duty of the county clerk "to provide printed ballots for every election for public officers in which the electors, or any of the electors, within the county participate and cause to be printed in the ballot the name of every candidate who has been certified or filed with the county clerk in the manner provided for in this chapter." At the time that the county clerk of Valley county caused to be printed and provided ballots for the election the name of Charles S. Hartman had been properly certified to his office by the secretary of state, and should have been by him substituted for that of Jos. G. Brown. Therefore the additional expense caused by the failure of the deputy clerk and recorder to notify his principal of the certificate sent by the secretary of state should not be borne by the county, but by the officer responsible therefor. Section 1533 of the Political Code provides how and when the cost of printing and distributing pasters where a vacancy has been filled is probably chargeable to the county, but under the statements of facts contained in your letter we think that section has no application. In our opinion the condition is the same as if the county clerk had negligently placed the name of some candidate under some other office than that for which he was nominated.

I therefore affirm your opinion given to the clerk and recorder that Valley county is not liable for the expense either of printing the pasters or of sending them by messenger to the various precincts.

Very truly yours,

ALBERT J. GALEN,
Attorney General.