

Registration. Election Districts. Vote, lost by removal.

1. The law relative to election districts of a county provided for in Section 61, of the Penal Code, is also applicable to an election district where a municipal election is held. And the penalties provided in Section 61, apply to one who registers or votes at such election.

2. When an elector has resided ten days in one ward and removes to another ward twenty days before an election, he thereby loses the right to vote in either ward.

Helena, Montana, April 12, 1907.

Hon. Sharpless Walker,
County Attorney,
Miles City, Mont.

Dear Sir:—

I am in receipt of your favor of April 3rd, 1907, presenting for decision by this office the following questions, to-wit:

“Section 61 of the Penal Code prescribes the penalty where a person wilfully causes, procures or allows himself to be ‘registered in the official register of any county,’ knowing himself

not entitled to such registration. Is an election district of a city in a municipal election such an 'election district of a county,' as is contemplated by the statute? If not, can a person who has actually registered, be prosecuted under Section 63 for attempting to register?"

"Art. I, Chap. V, of the Revised Ordinances of Miles City, in harmony with Section 4755 of the Political Code, requires that before entering the name of any person applying to register for a municipal election, the registry agent shall cause such person to make and subscribe an oath to the effect, among other things, that such person has been an actual resident of the Ward of which he desires to register as an elector, for thirty days immediately preceding the election held therein. Under this provision does a person, who, during the last 30 days previous to election, has lived the first ten days thereof in one Ward, and the last twenty days thereof in another, thereby lose his right to vote? And does a person who makes the oath that he has lived for thirty days in the last Ward he resides in, thereby render himself liable to be prosecuted for violation of the election laws?"

An elector must vote in the election district in which he resides at the time of the election. If he has not resided in a Ward sufficient time to entitle him to vote his ballot should be refused in the Ward of his residence. An elector removing from a Ward or an election district, and permanently locating in another Ward, would not be entitled to vote in the Ward from which he had removed his residence. Therefore, the elector has lost his right to vote in the case you state.

Thompson vs. Ewing, Brewst (Pa.) 92.

In re McDaniel, 3 Pa. Law J. 310.

18 Cent. Dig. 97.

The law relative to election districts of a county, provided for in Section 61 of the Penal Code, applies with equal force to an election district in a city where registration is necessary for those who would vote at a municipal election.

McDaniel Case, supra.

You are further advised that an elector who has attempted to register unlawfully, or who has registered without authority of law, may be prosecuted under the election laws. But you are further advised that in such cases, as in all criminal cases, there must be a criminal intent; and if there was an honest mistake of fact that no prosecution should be commenced.

Electors often confuse the question of residence with the right to vote, and we to whom are delegated the proper enforcement of the laws, will proceed with caution when called upon to decide upon the facts presented.

Respectfully submitted,
ALBERT J. GALEN,
Attorney General.