

Towns, Incorporation of Where No Registration District Thereofore Existed. Incorporation of Towns, Registration of Electors in the Absence of Prior Registration Books. County Commissioners, Power to Authorize Special Registration to Vote on Incorporation of Town.

Where a proper petition for the incorporation of a town has been filed, and the territory embraced within the proposed incorporation was never situated in any registration district, the board of county commissioners have authority to order a special registration in order that there may be qualified electors to vote at the election called by the county commissioners.

Helena, Montana, February 14, 1910.

Hon. J. H. Stevens,
County Attorney,
Kalispell, Montana.

Dear Sir:—

I am in receipt of your letter of February 7, requesting an opinion upon the following proposition:

“The residents of Polson have petitioned the board of county commissioners to be incorporated as a town; the requisite number of legal voters appear on the petition as signers; that commissioners had a census taken which showed something over five hundred persons within the proposed corporate limits; the commissioners are ready, and desire, to order an election on the question of incorporation. The question arises as to whether an election can legally be held at this time, for the following reasons and conditions. Until shortly prior to September 10, 1909, Polson was a part of the Flathead Indian Reservation, at which time the alleys and streets were dedicated and the government townsite plat filed in the office of the county clerk and recorder. September 10, 1909, the government held a public auction at which the town lots were sold to individuals. The proposed town does not lie within any registration district or voting precinct. Under these conditions can an election be legally held, and, if so, how? Who will be entitled to vote at said election? Should a registration agent be appointed, and all voters register?

We find no provision in our statutes governing the peculiar conditions existing at Polson.

In an opinion given to county attorney Walrath, on March 27, 1906, (Opinions of Attorney General 1905-06, p. 314), it was held that inasmuch as section 3209, revised codes, in providing for elections to vote upon the question of the incorporation of a town must be conducted under the general elections laws of the state, that section 491, revised codes, which is a part of the general election laws, govern such an election, and that under such section only the qualified electors whose names appear on the last general registration list of the precinct or precincts embraced in the territory described in the petition for incorporation have a right to vote at such election.

However, such opinion cannot apply to the facts stated by you, for the reason such statement of facts shows that the territory embraced within the boundaries of the proposed incorporation never have been in any registration district or voting precinct, and, therefore, it is impossible to furnish copies of the official register and check lists used at the next preceding general election, as provided in said section 491.

Where there was an election precinct embracing such territory at the last general election, then, under said section 491, the copies of the official register and check lists of such precinct must be used at the special election. But such section can have no application to the existing state of facts.

On the other hand, section 3208, as amended by the laws of 1909, p. 63, provides for the incorporation of a town whenever a petition has been signed by not less than 50 qualified electors, residents of the state and residing within the limits of the proposed incorporation; and a qualified elector, as used in this section, means a citizen of the United States, over the age of 21 years, a resident of the state for one year and of the county for 30 days.

Section 3290 provides that when such a petition has been filed, and a census develops the fact that there is the requisite number of inhabitants for the formation of a municipal corporation, that the county commissioners must call an election of all the qualified electors residing in the territory described in the petition.

Inasmuch as the provisions of said section 491 cannot apply in this particular case, it follows that the act of commissioners in obeying the mandatory provisions of said section 3209 in calling such an election would be absolutely futile, unless there is some method whereby the present qualified electors residing within the territory proposed to be incorporated can qualify themselves to vote at such election, for under the present registration of electors there would be no person to vote at the special election called by the commissioners, pursuant to said section 3209.

It is a general rule that all statutes must be construed, if possible, to give the provisions thereof full force and effect.

Section 491, in our opinion, is only intended to provide that in cases where there is a registration in existence that the same must be used at a special election, but that said section does not prohibit a special registration for a special election when there is no previous registration of electors in existence.

Therefore, in our opinion, there is nothing in the statutes which would prohibit the board of county commissioners from creating a registration district of the territory embraced in the proposed townsite of Polson, and to appoint a special registration agent to register all the qualified electors residing therein, and when such registration has been taken then all of such qualified electors who are registered would have a right to vote upon the question of the incorporation of the town.

As to who are qualified to vote at the first election for officers in case the town is incorporated, your attention is called to an opinion given to county attorney Ford, on May 12, 1908, (Opinions of Attorney General 1906-08, p. 274.)

Very truly yours,

ALBERT J. GALEN,

Attorney General.