

Elections of First Officers of Towns, County Clerk's Duty. Nominations of First Officers of Towns, Where Filed. Ballots, First Election of Town, County Clerk to Supply. Time of Filing Nominations for First Officers of Towns. Nominations, Time for Filing.

It is the duty of the county clerk to receive and file nominations and to prepare and supply ballots for the election of the first officers of a new incorporated city or town.

Nominations for first officers of a newly incorporated city or town may be filed at any time prior to the election.

The election of the first officers of a city or town is in the nature of a special election to fill vacancies.

Helena, Montana, November 2, 1910.

Hon. O. D. Gray,
County Attorney,
Choteau, Montana.

Dear Sir:—

I am in receipt of your letter of October 29th wherein you submit for answer the following questions:

1. Does the law require certificates of nomination for the first town officers of municipalities, to be filed with clerk and recorder, and if so within what time prior to the election of said officers?
2. Would the fact that a nomination for the office of mayor having been made by petition wherein the electors omitted to give their business and postoffice address invalidate such nomination?

In compliance with your request I wired you yesterday as follows:

“County clerk only place to file nominations. May be filed any time before election. This in nature special election. Petition insufficient. Letter follows.”

With reference to the first election of officers in a newly incorporated town, by reference to Sections 3210 and 3211 of the Revised Codes, it will be seen that for the purposes of completing the incorporation and getting the town upon a business and running basis, certain duties devolve upon the respective boards of county commissioners and the county clerk.

Section 3210 makes it the duty of the commissioners to call the election and give due and proper notice thereof.

Section 3211 makes it their duty to appoint judges and clerks of election to canvass the returns and to declare the results.

Section 3211 further provides:

“The election must be conducted in the manner required by law for the election of county officers.”

It thereupon, and of necessity, becomes the duty of the county clerk to perform the functions of a municipal clerk for the purposes of this first election, and in that connection, in accordance with the provisions of Sections 541 and 542 of the Revised Codes, it is the duty of the clerk to prepare the ballots.

Section 541 of the Revised Codes provides:

“All ballots cast in elections for public officers within the state (except school district officers), must be printed and distributed at public expense as provided in this chapter. The printing of ballots and cards of instruction for the elections in each county, and the delivery of the same to the election officers is a county charge, and the expense thereof must be paid in the same manner as the payment of other county expenses, but the expense of printing and delivering the ballots must, in the case of municipal elections, be a charge upon the city or town in which such election is held.”

Section 542 of the Revised Codes provides:

“Except as in this chapter otherwise provided, it is the duty of the county clerk of each county to provide printed ballots for every elections 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. Ballots other than those printed by the respective county clerks according to the provisions of this chapter must not be cast or counted in any election. Any elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, and must mark the same as provided in Section 552 (1361), and such vote must be counted the same as if printed upon the ballot and marked

by the voter, and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot, except as otherwise provided in this title."

For the purpose of receiving and filing the nominations for the respective offices of the new city or town, the clerk, in our opinion, must receive and file them as he would nominations for county officers.

Concerning the time within which such nominations are to be filed it is our opinion that they may be filed at any time prior to election, and in support of this contention I respectfully call your attention to this fact: that upon the completion of the incorporation of the city or town, as provided in Section 3209 of the Revised Codes, there exists a vacancy in each of the offices enumerated in Section 3211, and the first election would be in the nature of a special election to fill vacancies caused by the creation of the offices in the new municipality, and therefore the provisions of Section 527 would apply, Section 527 being as follows:

"Certificates of nomination to be filed with the secretary of state, must be filed not more than sixty days and not less than thirty days before the day fixed for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not more than sixty days and not less than twenty days before the election; certificates of the nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty days and not less than three days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies."

You also ask an opinion concerning the sufficiency of the petition and certificate of nominations which have heretofore been filed with your county clerk, copies of which said petition and certificate you enclosed in your letter. As to the petition I respectfully call your attention to Section 524 of the Revised Codes, providing, in substance, that each elector signing a certificate shall add to his signature "his place of business, his residence, and his business address. Upon examination of these petitions, it being apparent that the signers have failed to comply with this provisions, the petition is, necessarily, ineffective.

Concerning the sufficiency of the certificate of nomination, I consider it insufficient also for the reason that it does not comply with the provisions of Sections 521 and 522 of the Revised Codes.

Section 521 of the Revised Codes provides:

"Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public offices to be filled by election in the state. A convention or primary meeting within the meaning of this chapter is an organized assembly of electors or delegates representing a political party or principle."

Section 522 of the Revised Codes provides, in substance, that the certificate must contain "the name, residence, business and business address of the nominee." From an examination of the certificate it is evident that these requirements have not been complied with.

Yours very truly,

ALBERT J. GALEN,

Attorney General.