

**County Commissioners, Duties Of at Canvass of Votes. Special Election, Canvass of Votes At.**

The board of county commissioners acting as a canvassing board of a special election cannot refuse to canvass votes of precincts on the ground of alleged illegal votes. The board acts ministerially and has no right to pass upon the legality of an election.

June 1, 1911.

Hon. W. L. Ford,  
County Attorney,  
White Sulphur Springs, Mont.

Dear Sir:

I am in receipt of your letter of the 29th ult., wherein you request my opinion upon the following question:

"Can the board of county canvassers refuse to canvass the votes of precincts on the ground of the reception of alleged illegal votes and declare the results of the election on the returns of the remaining precincts?"

accompanying which letter you enclosed a copy of an opinion rendered by you to the board of county commissioners of Meagher county on May 29th, in which you advised the board that they could not refuse to canvass the returns from these precincts and in which you held that the board act ministerially in the canvass of election returns and have no right to pass upon the legality of an election or the qualifications of the persons voting thereat. In this opinion I concur. It seems to me that the case of State vs. Board of Canvassers in Chouteau County 13 Mont. 23 is decisive of this question and this case has been further followed by the recent case of State, ex rel. Breen vs. Toole, 32 Mont. 4, in which case the supreme court in discussing the powers of canvassing officers used the following language:

"We agree with counsel for the relator that under the law in this state the powers of canvassing officers are neither judicial nor quasi judicial; that they have no means given them to inquire, nor any power to inquire beyond the returns of the local election boards, and that their sole duty is to ascertain and declare the result. They cannot hear evidence touching the regularity or legality of any election and decide controversies touching these matters."

By the provisions of Sections 583 and 584, Revised Codes of 1907, it is the duty of the judges of election to deliver the ballots sealed to the county clerk and the county clerk must receive and file such sealed packages containing the ballots and must keep them unopened and unaltered for twelve months to allow opportunity for contest of election. There would be no way whereby the canvassing board could ascertain whether the illegal votes cast, if any were cast, were in favor or against the proposition voted upon and it is therefore my opinion that the duties of the board of canvassers are purely ministerial, their

duty being simply to ascertain the result of the election as certified to them by the judges of the respective election precincts.

If any illegal votes were cast at the election in sufficient numbers to change the final result, it would be incumbent upon any person interested to bring proper proceedings to attack the validity of the election, but these matters cannot be passed upon by the board of canvassers.

Yours very truly,

ALBERT J. GALEN,

Attorney General.