

Poll Books for Special Election, Preparation of. Candidates, Votes for Without Previous Nomination. Legislature, Authority to Decide Elections of Members.

The legislature is the judge of the election of its own members, hence the poll books should be so prepared, that a record may be kept of the number of votes cast for candidates for the legislature, though no previous nominations had been made.

January 20th, 1913.

Hon. John L. Slattery,
Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of the 24th inst., submitting the question:

“Should the county clerk have the poll books for the special election soon to be held in the County of Sheridan, prepared so as to show the probable number of votes for a senator and representative from that county?”

I gather from your question that the election proclamation does not mention these offices. It appears quite apparent from the provisions of Sec. 14, Chap. 112, Session Laws of 1911, referred to by you, that a senator and representative might properly be elected at this election. However, if none are elected, it will not have the effect of invalidating the election of others. The county would simply be without a representative until an election was held. Ordinarily it is probably true that the offices should be named in the proclamation, but a legislative office is somewhat different from a county office and it is possible that at such election votes may be cast for candidates for those two offices, although no nominations have been made therefor, and the offices are not named in the election proclamation. The constitution provides:

“Each house shall choose its own officers, and shall judge of the elections, returns, and qualifications of its members.”

Sec. 9, Art. 5, of the State Constitution.

Each house being exclusively judge of the election of its own members, the person receiving the highest number of votes at the coming election for either of these offices might be declared elected by the house or senate. For that reason it might be advisable for the county clerk to prepare his books so that a record may be kept of the number of votes cast for candidates for senator and representative.

Very truly yours,

D. M. KELLY,
Attorney General.