

Elections, Corrupt Practice Act. Corrupt Practice Act, Offenses Under. Non-Salaried Office, Supporting Candidate for.

A conviction cannot be had under Section 34 of the Corrupt Practice Act, when it appears that the acts complained of were in connection with the candidacy of a person running for the office of mayor in a municipality where no salary is attached to the office.

April 23, 1914.

Hon. G. J. Jefferies,
County Attorney,
Roundup, Montana.

Dear Sir:

I am in receipt of your letter of the 17th instant, wherein you call attention to Section 34 of the Corrupt Practice Act, and set forth:

"In city election of the third class, arrest made, charging violation of Section 34, in supporting Mayor. No salary of course attaches to the office of mayor in cities of the third class. Would prosecution under Section 34 be debarred under the provisions of Section 10? Please advise me in the premises at your early convenience, and greatly oblige."

The provisions of this law should be construed according to the fair import of their terms with a view to effect the objects of the law, and to promote justice, such is the rule laid down in the penal code (Revised Codes, 1907, Sec. 8096), and no other or different rule can be made to apply to this statute. It is likewise provided by the code (Idem 6223), as a rule of construction, that whenever the meaning of a word or phrase is defined, such definition is applicable whenever the same word or phrase occurs in the law. This rule is applicable to the Corrupt Practice Act. To constitute a crime or public offense, there must be a law forbidding or commanding the commission or omission of an act (Idem 8107). Section 34 of the Corrupt Practice Act provides in part as follows:

"It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate."

Section 10 of the Act contains the following provisions:

"Terms used in this act shall be construed as follows, unless other meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intent of the law:

" 'Candidate' shall apply to any person whose name is printed on an official ballot for public office, or whose name is expected to be or has been presented for public office, with his consent, for nomination or election."

" 'Public Office' shall apply to any national, state, county or city office, to which a salary attaches, and which is filled by the voters, as well as to the office of presidential elector, United States Senator, or presiding officer of either branch of the Legislature."

Construing the provisions of Section 34 in the light provided by the definitions and rules of construction as laid down in Section 10, and the provisions of the Code, supra, there is but one conclusion to be reached, which is that a candidate, within the meaning of the corrupt practice act, is a person whose name is printed on an official ballot for public office, to which a salary attaches. Hence, if the office of mayor in the city to which you refer, has no salary attached to it by any ordinance, a person running for that position is not a candidate within the meaning of the Corrupt Practice Act, and a person supporting an aspirant for such position at a municipal election, would not be guilty of any crime under the provisions of Section 34 of the Act.

Yours very truly,

D. M. KELLY,
Attorney General.