

Constitutionality, of Section 33, Chapter 113, Laws of the Twelfth Legislative Assembly. Special Election, Who Entitled to Vote at. Electors, Who Entitled to Vote at Special Elections. Registration, for Special Elections.

We have no hesitancy in saying that the provisions of Sec. 33, Chapter 113, Laws of the Twelfth Legislative Assembly, should not be relied upon in any case whatever, as similar laws have been many times held unconstitutional and void.

If any registration is required at such special elections, the official register and check list referred to in Sec. 34 of the Act would consist of the names appearing on the new Great Register, and in addition thereto, the names of those who have registered since that time and up to the time the official register and check list named in said Sec. 34 are supplied to the judges of election.

February 13th, 1913.

Hon. Vard Smith,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the 12th inst., submitting the question

"As to what registration list should be used in making up official register and check list for the election to be held for the incorporation of the Town of Clyde Park in your county."

Sec. 33 of Chap. 113, Laws of the Twelfth Legislative Assembly, as you are aware, requires the official register and check list used at the last preceding general election to be used in all cases of a special election. This section of the act, however, or laws containing similar provisions, have been so many times held unconstitutional and void, that we have no hesitancy in saying that the provisions of said Sec. 33 should not be relied upon in any case whatsoever. While the Supreme Court of Montana has not passed upon the constitutionality of the act, similar laws have been declared void by other courts.

This department has heretofore expressed doubt as to the constitutionality of said Sec. 33 and advised that it be not relied upon.

Opinions of Attorney General, 1910-12, 342.

The following cases hold similar laws to be void, principally upon the ground that they require the closing of the register at two long a period prior to the election:

Owenborough v. Hickman, 14 S. W. 688.
Buller v. Ellerbe, 22 S. E. at pp. 438-439.
Attorney General v. Detroit, 78 Mich. 545.
Kineen v. Wells, 144 Mass. 497, 11 N. E. 916.
McCreary on Elections, Sec. 133.
10 Am. and Eng. Enc. of Law, 580.
56 Am. St. Repts. 797.
Dagget v. Hudson, 3 N. E. 546.
Brooks v. Hydone, 42 N. W. 1122.
Attorney General v. Detroit, 44 N. W. 388.
Page v. Allen, 58 Pa. St. 338.
Patterson v. Barlow, 60 Pa. St. 75.
Edmunds v. Banbury, 28 Ia. 267.
Parry v. Whittaker, 71 N. C. 475.
11 S. E. 150.

Under the provisions of Sec. 28 of said Chap. 113, the great register is closed between the 1st day of January and the 20th day of January, 1913, and the county clerk during such time makes a new register of those persons who were previously registered and who had "exercised the privilege of franchise." This new register then becomes the official register, and the old register is *functus officio*. Any list of voters, therefore, made up subsequent to the 20th day of

January would be taken from the new register. Hence, at the special election to which you refer, if any registration at all is required, the official register and check list referred to in Sec. 34 of the act would consist of the names of the electors appearing on the new great register, and, in addition thereto, the names of those who have registered since that time and up to the time the official register and check list named in said Sec. 34 are supplied to the judges of election.

Very truly yours,

D. M. KELLY,
Attorney General.