

Elections, by Ballot. Candidate for Office, Right of Elector to Nominate. Elector, Right of to Nominate Candidate. Ballot, Writing in Name on.

An elector may write in upon his ballot the name of a person for any office.

August 22, 1914.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

Replying to yours of the 21st inst., wherein you ask:

"Can an elector write in the name of a person for any one of the offices and if electors do write in the name of a person for an office and such person receives the highest number of votes on that ticket, for the office, will such person be the duly elected candidate for the office for which he is voted for?"

Your attention is called to Art. IX of the Constitution, which provides:

"Sec. 1. All elections by the people shall be by ballot."

"Sec. 2. Every male person of the age of 21 years or over, possessing the following qualifications shall be entitled to vote at all general elections, and for all officers that now are or hereafter may be elective by the people."

"Sec. 11. Any person qualified to vote at general elections and for State Officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution. * * *"

Sec. 5 of Art. III of the Constitution of Montana, provides:

"All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

In the case of State ex rel Holiday v. Leary, 43 Mont. 157, the Supreme Court of Montana used the following language:

"And any statute which denies to the elector of the state, or any portion of it, the right to nominate candidates for public office, is in violation of Secs. 5 and 26 of our Bill of Rights, and void."

Sec. 20 of "A Bill to propose by Initiative Petition a law to provide for Party Nominations by Direct Vote"—which Sec. is found at p. 581, Laws of 1913, has reference only to the writing in upon one party ticket the name of a person who appears as a candidate for the same office upon another party ticket. But Sec. 542, Revised Codes of Montana of 1907, provides:

"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 Sec. 552, and such vote must be counted the same as if printed on the ballot and marked by the voter."

You are, therefore, advised that an elector may write in upon his ballot the name of a person for any one of the offices, place an X before such name, and such ballot must then be counted as set forth in Sec. 20, above referred to.

Yours very truly,

D. M. KELLY,
Attorney General.