

**Primary Election. Nominating. Precinct Committeeman,  
Qualifications of County. Clerk, Duty of.**

It is the duty of the County Clerk to certify the names of each of the persons having the highest number of votes at a primary nominating election, and to notify by mail each person so nominated. The Clerk's duties are purely ministerial. He performs only the functions prescribed by law. He may not refuse to certify and notify a person who has been elected precinct committeeman because such a person may not possess the necessary qualifications.

September 19th, 1914.

Hon. John L. Slattery,  
County Attorney,  
Glasgow, Montana.

Dear Sir:

I am in receipt of your letter as follows:

"In a certain precinct in this county no precinct committeeman was nominated by a given party. At the primary election the name of a man was written in and he voted for as precinct committeeman of the party for that precinct. The man whose name was written in is not a registered voter. No other person received a vote for precinct committeeman of the party.

"Will you kindly advise me if in your opinion this man whose name was written in, is a regularly elected committeeman of the party for the precinct, and should the county clerk issue him a certificate of election. Again, it is believed that the man does not reside within the precinct and is not a member of the party. If these facts develop, should the county clerk

issue a certificate of election to him? In short, whether the person elected was nominated as provided by the primary law, or whether he is or he is not an elector, is or is not a resident of the precinct, or is or is not a member of the party, must the county clerk issue the actual certificate of election? Has the county clerk any discretion in the matter?

"Would the fact that the man was not registered for the election, and could not vote at it, in any way effect his right to hold the office of committeeman?"

Section 23 of the Primary law provides in part as follows:

"The abstract of votes for county and precinct offices shall be on another sheet separately for each political party; and it shall be the duty of said clerk immediately to certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination as candidates for members of the Legislative Assembly, county, and precinct offices, respectively, and to notify by mail each person who is so nominated."

The clerk's duties are such only as are specified in the law. His duties are purely ministerial. He performs no judicial or discretionary function. If some person has been elected to the office of precinct committeeman, who is not qualified, his right to hold the office may be contested by proper means. By party custom and usage, the county central committee would be the proper tribunal to pass upon the qualifications of one who claims membership therein, and if in this case, the committee should find the facts to be as indicated in your letter, it would be within its province to refuse to recognize him as a qualified member of that body, or of the district which he undertakes to represent. Section 32 of the Primary law proscribes the qualifications of committeemen and declares that a committeeman shall be an elector, a resident of the precinct from which he is elected, and a member of the political party he is chosen to represent.

Yours very truly,

D. M. KELLY,  
Attorney General