

Elections, Right to Vote. Registration, for Elections, When Effective.

Electors who register before Notary Publics or Justices of the Peace, previous to the day when registration for the next general election is required to be closed, are entitled to have their names entered upon the registers and printed upon the precinct lists.

October 15, 1914.

Hon. Paul Babcock,
County Attorney,
Plentywood, Montana.

Dear Sir:

I am in receipt of your communication under date the 12th instant, requesting my opinion as to the right of electors to have their names placed upon the great register, and upon the precinct registers, so as to entitle them to vote in cases where they have registered before a notary public or justice of the peace, where such registrations did not reach the clerk before the close of the registration books, as provided by Section 7 of Chapter 74, Session Laws of 1913.

In this connection it is well to remember that Section 2 of Article IX of the Constitution of Montana, names the qualifications for electors, and while the legislature is given authority to insure purity of elections by proper regulations (Sec. 9, Art. IX of the Const.), it cannot add qualifications to those named in the constitution; such is not the object of registration laws:

"The object of the registration law is to prevent illegal voting by providing in advance of election, authenticated lists of the qualified electors."

15 Cyc. 302.

It has been held that the right to vote is a personal, vested constitutional right, which cannot be taken away by the failure, deliberate or careless, of registration officers to do their duty.

"Non feissance or mal-feissance of public officers could have no effect to impair a personally vested constitutional right * * *. Surely it would be a strange attempt to protect the elective franchise and preserve the purity of elections to put it in the powers of inspectors of elections by careless, accident or corrupt design to disfranchise constitutional voters."

State ex rel Wood vs. Baker, 38 Wis. 71.

To the same effect are:

Stenson vs. Sweeny, 17 Nev. 309;

People vs. Wilson, 62 N. Y., 186.

McCrary on Elections in dealing with the same subject, used this language:

"A case may occur where a portion of the legal voters have, without their fault, and in spite of due diligence on their part, been denied the privilege of registration. In such a case, if the voter was otherwise qualified, and is clearly shown

to have performed all the acts required of him by the law, and have been denied registration by the wrongful act of the registration officer, it would seem a very unjust thing to deny him the right to vote."

McCrary Elections, 3rd Ed., Sec. 136, 140.

The electors mentioned by you, having done all that was required of them by law when they went before the notary or justice of the peace, and made affidavits as required by Chapter 74 of the Session Laws of the 13th Legislative Assembly, must be classed as registered voters, if such registration was complete before the day upon which registration for the current election is required to be closed. They have done what the law required and what remains to be done by the clerk is merely ministerial, and in the nature of bookkeeping. I find that this question has been heretofore answered by this office in a general interpretation of Chapter 113, Laws of 1911, of which our present registration law is an amendment, made by Hon. W. S. Towner, on February 14, 1912, which interpretation was addressed to all of the county clerks of Montana, and is at present found in the Reports and Official Opinions of the Attorney General, 1910-12, p. 383. The particular point under discussion here was covered in that interpretation at page 389 of the volume above cited. It was there held:

"The intention of the law in my opinion, is that no application for registration must be made by the clerk after the time specified in the law for the closing of the great register, but where the application has been duly made prior to the time, the official entry by the clerk may be made at such time as the business of his department will warrant."

You are, therefore, advised upon the authorities above quoted, and the previous opinion of this office that electors who register before Notary Publics or Justices of the Peace, previous to the day when registration for the next election are required by law to be closed, are entitled to have their names entered upon the register, and printed upon the precinct lists.

Yours very truly,

D. M. KELLY,
Attorney General.