

Election, To two or more offices. Offices, Incompatibility of. County Clerk, Duty of. Certificate of Election, when to be issued.

Where the same person has received the highest number of votes as a candidate for more than one office, it is the duty of the county clerk to issue a certificate of election to him for each of said offices, unless the candidate declines one of the offices prior to the issuance of the certificates.

November 18, 1914.

Hon. W. M. Black,
County Attorney, Shelby, Montana.

Dear Sir:

I am in receipt of your letter submitting the question as to whether it is the duty of the clerk to issue a certificate of election to the person who receives the highest number of votes for Justice of the Peace, and also to the same person who receives the highest number of votes for the office of constable?

While the office of Justice of the Peace and that of constable are clearly incompatible and cannot legally be filled by the same person, yet the duty of the clerk is wholly ministerial and clerical. Under the provisions of Section 594, Revised Codes, it is his duty to issue certificates of election to the person receiving the highest number of votes for the various offices, as said votes are canvassed by the county board. The question of incompatibility of the two offices or disqualification or qualification of the candidate receiving the highest number of votes, are matters for judicial determination, and are questions which the clerk cannot officially pass upon. It would seem that the proper way to do would be for the person who has received the election to these two offices to inform the clerk which office he will accept and to decline

to accept the other. This would probably save him same future trouble and doubt. However, in the absence of any such declination, or choice by the candidate, it is the duty of the clerk to issue the certificates.

Yours very truly,

D. M. KELLY,
Attorney General.

Registration of Electors, Time of. Electors, Registration of.

The County Clerk and Recorder must register electors during the period between the last general election and the first day of January following.

November 20, 1914.

Hon. W. H. Friedham,

Deputy County Attorney, Choteau, Montana.

Dear Sir:

I am in receipt of your letter as follows:

"Inviting your kind attention to Sec. 28, on page 188, Session Laws of 1913, relating to the registration of electors, and to the fact that apparently this section fails to give the County Clerk and Recorder any authority to register voters between election day and the first day of January following; will you kindly advise me what the county clerk and recorder shall do with application to register during that period?"

The County Clerk and Recorder is specifically required under the provisions of Section 7 of Chapter 74, Session Laws of the 13th Legislative Assembly, to register the names of all qualified electors at his office between the hours of 9 a. m. and 5 p. m. on all legal days when the registration books are not required to be closed. The times when the registration books are closed are specified in Sections 7 and 18 and 28 of the Act, and the period between the day of the last general election and the first day of next January is not included within any exceptions provided for by the act. It follows, therefore, that during this period the registration books are to remain open.

Yours very truly,

D. M. KELLY,
Attorney General.