

Election—Primary, When Held. Primary Election, When Held. Candidates, When Nominated.

Under the laws of this state two primary elections must be held in presidential years; one for state and county officers on the seventieth day preceding the general election; and one for president, vice-president, delegates to presidential conventions and presidential electors on the forty-fifth day before the first Monday in June of such presidential year.

July 20, 1915.

Hon. A. M. Alderson,
Secretary of State,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your favor of the 28th ultimo, submitting the question:

As to whether candidates for state and county offices are nominated at the primary election to be held in April, 1916, for the selection of presidential electors, etc., or whether a separate primary election must be held in August of that year for the nomination of candidates for state and county offices?

A consideration of the proposition requires a construction of the two primary laws in their relation to each other.

The law relating to nominations of candidates for state and county officers, United States Senators and Congressmen, and the law relating to nominations of president, vice-president, delegates to presidential conventions and presidential electors, are both initiative measures. Petitions for both these measures were filed in October, 1911. Both measures were adopted at the general election of 1912, and both were proclaimed as law by the Governor on December 13th, 1912. The first of these laws, the one relating to state officers, etc., is by its terms made applicable to state and county officers, United States Senators and Congressmen. No mention is therein made of president, vice-president, delegates to presidential conventions, or to presidential electors. The time fixed for the primary election in this law is seventy days preceding the general election. This is mandatory. The other primary law relates to another group of officers, that is, President, Vice-President, presidential electors and delegates to presidential conventions. This latter law makes no mention of the officers named in the first law, and the time fixed for the primary election to nominate candidates under this latter law is forty-five days before the first Monday in June of the years when a President is to be elected. Neither of these laws makes any reference to the other law. Each one repeals all acts or parts of acts inconsistent or in conflict therewith. The law relating to the nominations of candidates for state and county officers is mandatory in its terms as to the date fixed for the primary election regarding the offices therein named, and that date must govern, unless that law has been amended or superseded by the other primary law relating to candidates for President, etc. This latter law is entitled:

"A Bill to propose by initiative petition a law to provide for the expression by the people of the State of Montana of their preference for party candidates for President and Vice President of the United States, the election of delegates to presidential conventions and the nomination of presidential electors by direct vote."

In Section 1 thereof, it is provided:

"In the years when a president and vice-president of the United States are to be elected, the primary nominating election shall be held on the forty-fifth day before the first Monday in June of said year."

Then follows a provision to the effect that laws pertaining to the election of candidates, registration of voters, etc., pertaining to the holding of biennial nominating elections shall be enforced; and in Section 2, it is further provided that the method of procedure for the party nominations for the office of Governor and for United States Senator shall be observed. The latter part of Section 1 and of Section 2 relate only to methods of procedure to be observed in the conduct of the primary election, and do not have any bearing upon the question as to whether the date named in the other primary law has been changed in presidential years. At the time this presidential primary law was proposed, and at the time it was voted for by the electors, the other initiatory measure relating to state and county officers, was not a law. Hence, the presidential primary law could not be an amendment of the other initiatory measure. Each of these initiatory measures was independent of the other, and either of them would have been effective had the other been defeated. Neither can it be held that either of these laws superseded the other, for they are of equal authority and relate to different subjects. The only law in existence relating to primary elections at the time of the enactment of the presidential primary, is that contained in the Codes, Section 521 to Section 540, particularly Sections 533 to 540. These Code provisions do not name any time for the holding of the primary, but confer authority upon the political party to name the time and place of holding the election. But such law does define legal voters, provides for the selection of judges and clerks and of challenging voters, and prescribes penalties for violating any of the provisions of the Act. The only law then which this presidential primary could amend, was the law then existing, to-wit: These code provisions; but Section 2 of the presidential primary bill provides in effect that the method of procedure shall be in accordance with the law then existing, or thereafter enacted, and as these Code provisions have been amended and superseded by the primary law relating to state and county officers, the method of procedure pointed out in that law must now be observed. But in as much as the primary law relating to state and county officers fixes the date of that election, and the presidential primary did not or could not amend that law, it necessarily follows that the date fixed in the first of these primary laws for the nomination of state and county officers must govern as to those officers, and that the time for holding the primary nominating elections named in the presidential primary law, has reference only to the nomination of candidates for the

offices named in that Act. It may also be observed that by the provisions of Section 23, Article V of the State Constitution, the subject of all Bills shall be clearly expressed in the title, and if any subject shall be embraced in any Act, not expressed in the title, the Act as to such subject, shall be void. The title to the presidential primary law does not make any reference directly or indirectly except to candidates for president, vice-president, delegates to presidential conventions and presidential electors. There is nothing in this title that would appraise any voter of the fact that he was voting for a measure which would in any manner amend or change the provision of the law relating to candidates for state and county officers. Measured by this provision of the Constitution, the title to this Bill is not broad enough to sustain the Act, as an amendment, changing the date of the election named in the other initiatory measure.

For these reasons, I am of the opinion that the primary nominating election for state and county officers, United States Senators and members of Congress, must be held on the seventieth day preceding the general election in 1916, and that the primary nominating election for candidates for president, vice president, delegates to the presidential conventions, and of presidential electors, must be held on the forty-fifth day before the first Monday in June of the year 1916.

Yours very truly,

J. B. POINDEXTER,

Attorney General.