

Elections, Registration of Women. Women, Registration of. Change of Name by Marriage, Effect on Registration.

Women who have registered in their maiden names are not required to register again upon marriage, but are advised to do so as a matter of policy.

March 2, 1916.

Hon. R. G. Wiggernhorn,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter of the 28th instant, propounding the question as to whether

“women who have been heretofore regularly registered in their maiden names while unmarried, are required to re-register after marriage and a consequent change of their names?”

You state that to be safe, you have advised the clerk and recorder to require such ladies to re-register, and you request an opinion as to whether such advice be correct.

Section 7 of Chapter 130, Laws of 1915, contains the following provisions:

“Such general registration of all voters shall be required but once, and any person once registered shall thereafter, so long as he remains a qualified elector of the precinct from which he registers, shall be entitled to vote, provided the names of any qualified elector who shall fail to vote at any general election, shall, by the county clerk, in the manner hereinafter provided, be removed from the precinct register and he may not thereafter vote until he has again registered.”

Re-registration cannot, of course, take place until the former registration is cancelled, for double registration is not permitted. The county clerk cannot cancel a registration except:

- “1. At the request of the party registered.
2. When he has personal knowledge of the death or removal from the county of the person registered or when a duly authenticated certificate of the death of any elector is filed in his office.
3. When the insanity of the elector is legally established.
4. Upon the production of a certified copy of a final judgment of conviction of any elector of felony.
5. Upon the production of a certified copy of the judgment of any court directing the cancellation to be made.”

Section 20, Chapter 122, Laws of 1915.

and when an elector fails to vote at any general election (Section 15, *idem.*)

The clerk's duties are ministerial, and he cannot take judicial notice of the fact that a registered female has married and adopted the

surname of her husband. Hence, it is his duty under the madate of Section 18, idem, to enter the name of such person in the precinct register, as it appears in the card indices provided for in Section 7 of the Act.

The name of the party is required to be given when registering merely for the purpose of identifying the individual. When a woman marries, I know of no positive law requiring her to adopt the name of her husband. By custom and usage and as a matter of convenience, the surname of the husband is conferred upon her when she marries, but any person has a right to be known by any name he or she chooses.

Schulers Domestic Relations, 6 Ed. 40, 29 Cyc. 270, 271.

Thus a divorced woman may assume her maiden name without statutory authority.

“A name is that by which we distinguish a particular individual.”

Bouvier's Law Dictionary.

It thus becomes apparent that all the law looks to is the identity of the individual. When that is clearly established, the party is entitled to vote. Every qualified elector who once registers, and does not remove from the precinct, and who votes at every general election remains a qualified voter, unless, one of the contingencies mentioned in Section 20 above happens. The county clerk cannot compel the re-registration of a woman who marries, after she has married. Such a holding would lead to endless mischief, and in many instances would amount to disfranchisement; as for instance, if she marries during the period of thirty days preceding any election, during which the registration books are required to be closed.

An elector whose name as given when he or she registered, and whose name so appears on the precinct register, establishes his or her prima facie right to vote,

“provided, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name by the oath of two reputable freeholders within the precinct in which such elector is registered.”

The conclusion is that re-registration, under the circumstances above outlined cannot be compelled, yet it is recommended that because a woman when she marries takes the surname of her husband, she should, as a matter of policy request the cancellation of her previous registration, and then register again under her new name.

Yours very truly,

J. B. POINDEXTER,
Attorney General.