

Election, for County Bonds. County Bond Election, May Legally held When. Bond Election, Closing of Registry Books. Notice, of Closing of Registry Books.

Where it is proposed to hold a county bond election, and the county clerk fails to give the statutory notice of the closing of the registration books, such election may nevertheless be legally held, but is discountenanced.

April 12, 1916.

Hon. Herbert H. Hoar,
Sidney, Montana.

Dear Sir:

I am in receipt of your letter setting forth that a special election has been duly ordered by the Board of County Commissioners to take place on April 21st, for the purpose of enabling the qualified electors of your county to vote upon a proposed bond issue. The Preferential Presidential Primary Election will be held on that day, and you inform me the county clerk has given legal notice of the closing of the registration books for such election, but failed to give the statutory notice of the closing of the books for the bond election, and you inquire whether the clerk's neglect in such respect, will vitiate or render questionable the bond election.

The doctrine now quite generally followed by the courts is to the effect that all the provisions of the election laws are mandatory if enforcement is sought before election in a direct proceeding for that purpose, but that after an election is held, the provisions of such laws are deemed to be directory only, unless of a character to affect the free and intelligent casting of the vote, or to the ascertainment of the result; or unless the provisions affect an essential element of the election; or unless it is expressly declared by the statute that the particular act is essential to the validity of an election; or that its omission shall render it void.

Jones v. State, 153 Indiana, 440, 55 N. E. 229;

See also, note to Patten v. Watkins, 90 Am. St. Rep. 49.

Our own court has said:

"It is a rule of well-nigh uniform recognition that after an election has been held, a party will not be permitted to challenge it, unless he can show that a different result would have been reached but for the conditions of which he complains."

Potter v. Furnish, 46 Mont. 391.

I am, therefore, of the opinion that unless the election is sought to be enjoined on account of the clerk's omission to perform this ministerial duty, the election may legally be held on the contemplated bond issue on the date named. However, it should be taken into consideration that your work is not ended with the election. Commercial houses in the market for bond issues, usually insist upon the strict and literal compliance of all the provisions of the election laws as a condition of purchase, and it will be well for you to advise your board to take this matter into consideration.

Yours very truly,

J. B. POINDEXTER,

Attorney General.