

Primary Election Law, Repeal Of and Amendment To Be Referred.

Both the repeal and subsequent amendment to the primary election law should be voted upon at the election in November.

April 23, 1920.

Hon. C. T. Stewart,
Secretary of State,
Helena, Montana.

Dear Sir:

I am in receipt of your letter asking that I advise you whether Chapter 113, Acts of the regular session of the 16th Legislative Assembly, being an act to provide for the nomination of candidates of the different political parties and to repeal the direct primary law initiated and passed and approved by the people at the general election held in November 1912, and Chapter 28 Acts of the Extraordinary Session of the 16th Legislative Assembly, being an act to amend certain sections of the direct primary law initiated and passed and approved by the people at the general election held in November 1912, and to repeal Chapter 113 Acts of the regular session of the 16th Legislative Assembly, should both be submitted at the general election to be held on November 2nd. 1920.

In 1912, a petition was filed in the office of the Secretary of State for the purpose of initiating a direct primary law, and the proposed law was submitted to and approved by the people at the general election held in November of that year, and thereafter, by the Governor's proclamation placed in full force and effect.

No part of such initiated law was repealed and no amendments were made to any part thereof prior to the regular session of the 16th Legislative Assembly, but such Legislative Assembly, at its regular session in 1919, passed an act providing for the nomination of candidates by direct vote and repealing the primary law initiated and passed and approved at the 1912 election, such act of the 16th Legislative Assembly being Senate Bill 124, and now designated as Chapter 113 Sess. Laws 1919. Said Chapter 113 provided that the same should be submitted to the people for their approval or rejection at a special election to be held on the first Tuesday in September, 1919, and if approved by a majority of the votes cast at such election the same should then be in full force and effect from and after December 31, 1919.

Under the provision of Sec. 1, Art. 4 of the Constitution and Secs. 106 to 115 inclusive, Revised Codes 1907, a petition was filed in the office of the Secretary of State ordering that said Chapter 113 be referred to the people for their approval or rejection at the general election to be held on the 2nd day of November, 1920, such petition being signed by a sufficient number of legal voters to render said act inoperative, consequently a proclamation was issued by the Governor announcing that such petition had been filed and that such act had been ordered referred to the people to be voted on at the general election to be held on November 2nd, 1920, and that the same was inoperative until approved at such election.

Thereafter the Governor, by proclamation, convened the 16th Legislative Assembly in extraordinary session, and at such extraordinary session the Legislative Assembly passed an act amending certain sections of the direct primary law initiated and passed and approved at the general election held in November, 1912, and repealing Chapter 113 Acts of the regular session of the 16th Legislative Assembly, such act of said extraordinary session being Senate Bill 32, and now designated as Chapter 28 Sess. Laws Extraordinary Session 1919, and such act providing that it should be in full force and effect from and after its approval, and being approved by the Governor on August 11th, 1919, became immediately effective.

Under the provision of the Constitution and Revised Codes above referred to, a petition was filed in the office of the Secretary of State ordering that said Chapter 28 Laws Extraordinary Session, 1919, be referred to the people for their approval or rejection at the general election to be held on November 2nd, 1920, such petition being signed by a sufficient number of legal voters to render said act inoperative, consequently a proclamation was issued by the Governor announcing that such petition had been filed and that such act had been ordered referred to the people to be voted on at such general election to be held on November 2nd, 1920, and that the same was inoperative until approved at such election.

Chapter 113 Sess. Laws 1919 did not attempt or pretend to amend in any way the direct primary law initiated and passed and approved by the people at the 1912 general election but directly repealed such initiated law and provided an entirely different primary election law, and the referendum petition filed for the purpose of ordering such act referred specifically ordered that it be referred to the people to be voted on at the general election to be held November 2nd, 1920.

Chapter 28 Sess. Laws Extraordinary Session 1919, attempted to repeal Chapter 113 acts of the regular session 1919, and to amend certain sections of the primary law initiated and passed approved by the people at the 1912 general election, so that if no petition had been filed for the purpose of ordering Chapter 28 referred, the direct primary law initiated and passed and approved by the people in 1912, as amended by said Chapter 28, would now be in full force and effect, Chapter 113 acts of regular session of 1919 being repealed. But Chapter 28 Extraordinary Session has been ordered referred, the petition so ordering it referred specifically ordering that it be referred to the general election to be held on November 2nd, 1920, and being signed by sufficient legal voters to render said act inoperative.

That Chapter 28 Sess. Laws Extraordinary Session 1919, must be submitted at the general election to be held on November 2nd, 1920, by reason of its being ordered referred to such election, there can be no doubt, and whether Chapter 113 Sess. Laws 1919, must also be submitted at such election depends entirely upon what effect the passage of Chapter 28 Sess. Laws Extraordinary Session 1919, and the subsequent referendum thereof, has on said Chapter 113 Sess. Laws 1919. If Chapter 28 Laws Extraordinary Sess. 1919, had not been referred Chapter 113 Sess. Laws 1919 would be repealed thereby, but Chapter 28 Extraordinary Sess. 1919 having not only been referred but also rendered inoperative until approved at the general election to be held on November 2nd, 1920 it did not have the effect of repealing Chapter 113 Sess. Laws 1919. (State ex rel Hay v. Alderson 49 Mont. 387, 142 Pac. 210; in re McDonald 49 Mont. 454, 143 Pac. 947; State ex rel Esgar v. District Court 55 Mont.—185 Pac. 157.) and said Chapter 113 is a valid and subsisting law, altho inoperative until voted on at the general election to be held on November 2nd, 1920, when if approved, it will not only be a valid and subsisting law but also in full force and effect after the issuance of the Governor's proclamation, while if rejected it will cease to be a law.

I am, therefore, of the opinion that both Chapter 113 Session 1919, and Chapter 28 Sess. Laws Extraordinary Session 1919, must be submitted at the general election to be held on November 2nd, 1920.

Respectfully,

S. C. FORD,

Attorney General.