

Election Judges—Power to Appoint Clerks—Compensation of Clerks.

Section 593 of the Revised Codes of 1921 construed to give to judges of an election the authority to appoint clerks who need not be of their own number, and to entitle such clerks to compensation for their services.

E. E. Collins, Esq.,
County Attorney,
Billings, Montana.

My dear Mr. Collins:

I have your request for my opinion upon the right of the judges of election to elect clerks.

The facts that have raised this question, as shown by your letter, are as follows:

“In some election precincts of your county, the judges of election elected two of their own number to serve as clerks, while in others the judges elected other persons as clerks.”

The judges of election are appointed by the Board of County Commissioners; five in precincts which contain one hundred voters or more, and three in all other precincts. (Sec. 588, Rev. Codes of 1921.)

These judges are given the authority to elect their own clerks, the only requirement being that such clerks must have the same qualifications as the judges themselves. Section 593, Revised Codes of 1921, which confers this authority, says:

“The judges must elect two persons having the same qualifications as themselves to act as clerks of the election.”

This provision seems too clear for any misconstruction whatsoever. Had the Legislature intended that two of the judges should serve as clerks, it seems that both Section 588 and 593 would have specifically so stated, but no provision is made for appointment of clerks by the Board of County Commissioners. They appoint only the judges, and the judges in turn elect the clerks, who shall be “two persons having the same qualifications” as the judges, not two of their own number.

It is, therefore, my opinion that, wherever the judges of election have exercised their authority under Section 593, supra, and elected two clerks, such clerks are entitled to compensation for their services.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.