

Presidential Electors—Electors—Officers—Senators.

Since the constitution of Montana (section 7, article V) does not prohibit a state senator from holding another elective office such a person is competent to hold the office of presidential elector since the same is an elective office.

June 13, 1928.

C. A. Rasmussen, Esq.,
Collector of Internal Revenue,
Helena, Montana.

My dear Mr. Rasmussen:

You have requested my opinion whether a person holding the office of state senator may be nominated and elected presidential elector.

“Whether the incumbent of one office becomes disqualified by accepting another depends upon the question whether the law forbids the holding of two offices by the same person, and if not, then upon the further question whether the functions and duties of the two offices are incompatible.” (McCreary on Elections, 4th Edition, Section 335, citing authorities.)

The laws of Montana have not expressly prohibited the holding of two offices by the same person at the same time. However, members of the legislative assembly are subject to the provisions of section 7 of article V of the constitution of Montana which reads in part as follows:

“No senator or representative shall during the term for which he shall have been elected be appointed to any civil office under the state.”

It will be observed that the above constitutional provision prohibits only the holding of an **appointive** civil office.

In 29 Cyc., page 1384, the following rule is stated:

“A provision that no one shall be ‘appointed’ to two offices will not prevent his election thereto.”

Citing:

State v. Somers (N. C.), 2 S. E. 161;
State v. McCollister, 11 Ohio, 46;
State v. Southwick, 13 Wis. 365;
Carpenter v. People (Col.) 5 Pac. 828.

It is my opinion that since the constitution of Montana does not prohibit a state senator from holding another elective office, such person is competent to hold the office of presidential elector since the same is an elective office.

It is, therefore, my conclusion that the office of state senator and presidential elector may legally be held by the same incumbent.

Very truly yours,

L. A. FOOT,
Attorney General.