

**Elections — Tie — Nominations — Candidates — Justices  
of the Peace—Residence.**

A person nominated for office on more than one ticket must elect as to which ticket he will run on at the general election.

A justice of the peace need not reside in the township for which he was elected until after he has been elected.

August 6, 1928.

W. F. Allison, Esq.,  
County Clerk and Recorder,  
Cut Bank, Montana.

My dear Mr. Allison:

You have submitted to me the following statement of facts and request for opinion:

“A person filed for the office of clerk of court on the republican ticket and his name was written in on the democratic ticket for the same office and another person’s name was also written in on the democratic ticket. Both persons received an equal and highest number of votes for the same office at the primary nominating election held on July 17th, 1928.

“These parties were notified and asked to appear at a given date and hour according to section 654 R. C. M. 1921. Neither party appeared for the drawing but as county clerk I proceeded to decide publicly with several witnesses present. In the drawing the candidate’s name on the republican ticket was drawn out

of the box and was declared nominated which I believed would necessarily leave the democratic ticket blank for said office.

“Please advise if the county clerk should have proceeded as above where a tie existed.”

It is my opinion that the county clerk properly proceeded to decide who received the nomination under the provisions of section 654 R. C. M. 1921. When it was decided by him that the person who had filed on the republican ticket had likewise received the nomination on the democratic ticket the situation then became one wherein the candidate should have elected on which ticket he would choose to run at the general election. This because of the provisions of chapter 14 of the laws of 1927, which provides in part as follows:

“In case any person is nominated as provided in this act, upon more than one ticket, he shall within ten (10) days after such election file with the secretary of state, county clerk or city clerk, a written document indicating the party designation under which his name is to be printed on the official ballot for the general election, failing in which, his name shall be printed upon the party ticket for which his nominating petition shall have been first filed, and no candidate shall have his name printed on more than one ticket.”

In case no election was made the name of the candidate would appear upon the republican ticket at the general election and there would be no candidate appearing on the democratic ticket.

You have also submitted the following question:

“Three persons were tied for the nomination on the democratic ticket for justice of the peace of Cut Bank township. One of the persons is a voter and resident of the Browning township. In the drawing as per section 654 this person’s name was drawn from the box. Was this procedure proper and is he entitled to the nomination?”

Section 8865 R. C. M. 1921 prescribes the qualifications of a justice of the peace. It is not necessary that a justice of the peace should reside in the township for which he was elected prior to the election but he must reside in the township in which his court is held after he has been elected. Prior to election the only qualification regarding residence is that he shall have been a resident of the county for one year next preceding his election. It was proper in the case referred to by you to resort to the procedure prescribed by section 654 R. C. M. 1921 to determine the nominee.

Very truly yours,

L. A. FOOT,  
Attorney General.