

Elections—Canvass—Nomination—Acceptance.

A person whose name was written in at the primary election and who received the nomination may accept the nomination after ten days have expired from the date of election.

August 9, 1928.

Hugh N. Marron, Esq.,
County Attorney,
Wolf Point, Montana.

My dear Mr. Marron:

You have called my attention to chapter 125, laws of 1927, and particularly to the portion reading as follows:

“Any person receiving the nomination by having his name written in on the primary ballot, and desiring to accept such nomination, shall file with the secretary of state, county clerk, or city clerk, a written declaration indicating his acceptance of said nomination within ten (10) days after the election at which he receives such nomination, and at the same time he shall pay to the officer with whom such declaration of acceptance is filed the fee above provided for filing a primary nominating petition for such office.”

You desire my opinion of the meaning of the word “election” as used in the above statute. You wish to know whether it means the day of election or whether the ten day period runs from the time that the official canvass has been made. A similar provision is found in chapter 14, laws of 1927. Election statutes should be liberally construed. (Lane vs. Bailey, 29 Mont. 548.)

Before taking up the question of the meaning of the word “election” as used in the above statute I wish to call attention to the case of State ex rel. Wallas vs. Callow, 78 Mont. 308. In that case it was held that section 432 R. C. M. 1921, which requires the filing of the official oath by an officer “within thirty days after the officer has notice of his election” is directory and not mandatory. The supreme court in that case quoted with approval the following from Mechem on Public Offices and Officers:

“These provisions as to time, though often couched in most explicit language, are usually construed to be directory only and not mandatory; * * * a failure to give bond within the time prescribed does not, therefore, ipso facto work a forfeiture, * * * even though the statute expressly provides that upon a failure to give the bond within the time prescribed, the office shall be deemed vacant and may be filled by appointment.”

It is my opinion that the provisions of chapter 125, laws of 1927, relating to the time for filing the written declaration would be held to be directory merely and not mandatory.

It has been held also that the term "election" means the act of casting and counting the ballots as well as making returns thereof.

In *Kilgore vs. Jackson* (Texas) 118 S. W. 819 the court quoted with approval the following language from the earlier case of *Norman vs. Thompson*, 72 S. W. 62:

"As used in the foregoing article, the term 'election' means the act of casting and receiving the ballots from the voters, counting the ballots, and making returns thereof. *State v. Tucker*, 54 Ala. 210. That is the meaning of the word 'election' in ordinary usage, and it must be so construed; there being nothing in the law to suggest that the legislature intended to use it in a different sense."

Hence, it is my opinion that the written declaration referred to in chapter 125, *supra*, may be filed after the period of ten days from election day has expired.

Very truly yours,

L. A. FOOT,
Attorney General.