

**Elections—Special Elections—Nominations—Ballots—Vacancies.**

Where a special election is called to fill vacancies in office nominations may be made by petition at any time before election but must be in time to permit the printing and distribution of the ballots if the name is to appear thereon.

Special ballots should be used for a special election to fill a vacancy.

September 19, 1928.

Donovan Worden, Esq.,  
Deputy County Attorney,  
Missoula, Montana.

My dear Mr. Worden:

You have called my attention to the latter part of section 618, R. C. M. 1921, in connection with the information heretofore given advising that a special election should be called by the board of county commissioners to fill a vacancy occurring in the office of county commissioner since the primary election.

This section fixes the maximum and minimum time within which certificates of nomination may be filed when made under the provisions of section 615, et seq. The portion of the section to which you have called attention provides that "The provisions of this section shall not be held to apply to nominations for special elections to fill vacancies."

Evidently, the legislature considered the time limitations as fixed by this section inappropriate and inapplicable to a special election to fill a vacancy where the purpose of the election is to fill a vacancy as expeditiously as possible. There is no other provision of law fixing the time for filing certificates of nomination, and it follows that certificates of nomination to fill vacancies may be filed at any time up to the date of the election. Of course, it requires some time for the clerk to make up the ballot and have it printed and distributed to the various precincts in the county in time for the opening of the polls on election day, so that whatever time would be required by the clerk to do this would be the limit within which a certificate of nomination could be filed if the nominee desired his name to appear upon the printed ballot.

The statutory provisions for calling a special election, as was stated by the supreme court in the case of *State ex rel Rowe v. Kehoe*, 49 Mont. at 592, are crude and do not by the most appropriate expressions confer this power; nevertheless, we think it sufficiently confers the power within the rule that these boards have only such powers as are conferred upon them by the constitution and statutes granting and defining their powers.

By referring to these sections it is apparent that a special election to fill a vacancy was intended to be held with as little formality as

possible, and within as short a time as the election machinery can be made to operate. (See sections 534-35-36, R. C. M. 1921).

It is therefore my opinion that certificates of nomination to fill a vacancy where a special election is called may be filed at any time prior to the date of election, but if the candidate desires his name to appear upon the printed ballot it should be filed in time to permit the clerk to make up, print, and distribute them to the different precincts of the county prior to the opening of the polls on election day.

It is further my opinion that the names of the candidates should be printed upon a separate ballot in the same manner as though the election was held at a separate time from the general election.

Very truly yours,

L. A. FOOT,  
Attorney General.