

Cities—Elections—Candidates.

The election provided for in Section 5003, R.C.M., 1921, being the annual municipal election, must be held regardless of whether any candidates have filed for the offices to be filled.

Seth F. Bohart, Esq.,
County Attorney,
Bozeman, Montana.

February 24, 1930.

My dear Mr. Bohart:

You have requested an opinion whether a city council may dispense with the holding of the annual municipal election required by law to be held on the first Monday in April, when no candidates have filed for the offices to be filled.

Section 5003, R.C.M. 1921, reads as follows:

“On the first Monday of April of each year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor, and one alderman from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for two years, and until the qualifica-

tion of his successor; and each alderman so elected to hold office for a term of two years, and until the qualification of his successor; and also in cities of the first, second, and third class, a police judge and a city treasurer, who hold office for a term of two years, and until the qualification of their successors.”

In my opinion, this section is mandatory, and the holding of the election is not left to the discretion of anyone. To dispense with the election simply because there are no candidates could be justified only upon the assumption of the legal hypothesis that the election is held merely for the purpose of choosing between candidates, or, if there be but one, for the purpose of enabling him to be elected to office. This is a false hypothesis. Elections are not held for the purpose of giving candidates an opportunity to be elected, but for the purpose of enabling the people to exercise their right of suffrage, and the right to vote for officers is not confined to voting for those who have signified their willingness to hold office by the declaration of their candidacy. The people may elect someone who is not a candidate by the “writing in” process if the candidates are not acceptable to them, or if there are no candidates, and if the person so elected possesses the other qualifications required by law and accepts the office, he is entitled to hold it to the exclusion of the incumbent or any other person.

It is therefore my opinion that the municipal election required by law to be held on the first Monday of April must be held, and that no one has authority to dispense with it; that the holding of such election could be compelled by mandamus and that any person charged with any duty in connection with the holding of such election who fails to perform that duty is subject to the penalty provided in Section 10747, R.C.M., 1921.

Very truly yours,
L. A. FOOT,
Attorney General.