

**Elections—Cities and Towns—Candidates.**

Although there be no candidates for the offices to be voted upon, nevertheless the voters have the right to vote for persons to fill the offices by writing in the names of persons for whom they desire to vote. They may not be deprived of this right merely because no one is an avowed candidate. The holding of city elections as provided in section 5003 R.C.M. 1921 is mandatory.

County Clerk and Recorder,  
Anaconda, Montana.

March 9, 1929.

Dear Sir:

You have stated that the officers of the city of Anaconda have advised you that they do not intend to hold a city election for the election of aldermen this year, and you request an opinion whether this is legal so that you may know whether it is necessary for you to procure and furnish the city with the things required by law to be furnished by you in connection with the holding of an election by the city.

Section 5003 R.C.M. 1921 is 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 qualification 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. While there may be no candidates for the offices to be voted upon, nevertheless, the voters have the right to determine for themselves who will occupy the offices, the terms of which expire on the first Monday in May of this year. At any election the electors are not bound to vote for any person whose name appears upon the ballot as a candidate, but they have the right to write in the name of a person of their own choice, and they retain this same right of voting for any person they may desire to vote for, even though there are no candidates' names printed upon the ballot.

The purpose of the law in providing for the election to fill offices is to ascertain the will of the electors as to whom they would have as their public officials, and this right of expression cannot be denied them merely because there are no candidates for the offices. They have the right to elect someone who is not a candidate, and if the person so elected accepts the office and qualifies he is entitled to hold the office, provided he possesses the qualifications required by law.

It is therefore my opinion that an election must be held in Anaconda on the first Monday in April as provided in Section 5003 R.C.M. 1921, and any elector of Anaconda could compel the holding of such election by an appropriate action in court, and you should not fail to perform whatever duties are imposed upon you by law in regard to this election.

Very truly yours,

L. A. FOOT,

Attorney General.

By L. V. Ketter, First Assistant.