

**Counties—Manager Form of Government—Candidates—
Ballots—Elections.**

Where on the same date that the primary nominating election is held the question of whether a county will adopt the manager form of county government will also be voted upon; the candidates who receive the nomination for offices other than those of county commissioner, county superintendent of

schools, sheriff, county attorney and clerk of the court would not be entitled to have their names appear upon the general election ballot if the proposition to adopt the new form of government carries and the date for the new government taking effect is prior to the date when the candidates nominated, if elected, would take office.

Mr. Niels Madsen,
County Clerk and Recorder,
Plentywood, Montana.

April 6, 1932.

My dear Mr. Madsen:

I have your request for an opinion. You state that on July 19, 1932, the same date on which the primary nominating election will be held, the proposition to adopt the manager form of government for your county will be submitted to the electors thereof.

You inquire if the persons who receive the nomination for offices other than those of county commissioner, county superintendent of schools, sheriff, county attorney, and clerk of court, would be entitled to have their names appear on the ballot at the following general election if the proposition to adopt the manager form of government carries. Also, should that event occur, you inquire if the candidates so nominated for offices other than those mentioned above would be entitled to a return of their filing fees paid at the time they became candidates at the primary nominating election.

The law provides that the date when the new form of government, if adopted, shall take effect, shall be stated in the petition or resolution mentioned in the act (Chapter 109, laws of 1931). If this date is prior to the date on which county officials who are elected at the coming general election take office the candidates nominated at the primary election for offices other than those of county commissioner, county superintendent of schools, sheriff, county attorney and clerk of the court, would not be entitled to have their names appear as candidates for the offices for which they were nominated for the reason that the new form of government adopted by the electors of the county would dispense with filling those offices by election. The law does not require an idle ceremony such as voting for candidates for offices that are not to be filled by election.

The candidates nominated for county offices other than those specifically mentioned above would not be entitled to a return of the filing fees which they paid at the time they became candidates at the primary nominating election. At the time they paid these fees the offices for which they sought the nominations were to be filled by election subject to the action of the voters on the proposition to change the form of county government. The fact that their nominations are rendered worthless by the change of the form of county government would not authorize a return of the filing fees. The filing fees were paid by the candidates for the privilege of having their names appear upon the primary ticket as candidates for nomination—not for election. They will have

received all of the benefits that the law gives them in return for their filing fees. Furthermore, there is no provision made by the law for a return of the filing fees in such cases.

Very truly yours,

L. A. FOOT,

Attorney General.