

**Opinion No. 2-A****Legislature—House of Representatives  
—Election Contests—Corrupt  
Practices Act.**

HELD: The decision as to whether or not any person not a member of the House of Representatives may contest one holding a certificate of election, rests solely with the House of Representatives. The authority of the House is complete and conclusive. And while the Corrupt Practices Act is not binding upon the Legislature in the judging of the qualifications of its members, yet the public policy has been expressed therein by the people that "any elector may contest the right of any person to any nomination or office. . . ."

January 9, 1933.

You have requested a further opinion in connection with the contest against seating John A. Sadring of Musselshell County. This office has fully covered this matter in an opinion heretofore rendered.

The questions to be determined in accordance with your letter are of a somewhat technical nature. In our former letter we attempted to set forth such rules of the Supreme Court of this State as are pertinent.

Above and beyond all questions of procedure is the constitutional provision "Each House shall choose its other officers and shall judge of the elections, returns and qualifications of its

members." Article V, Section 9, Constitution. State vs. Kenney, 9 Montana 223 (232).

Your authority is so complete in this matter that we would call your attention to a quotation from the case of State ex rel. Boulware vs. Porter, 55 Montana, 471, page 474: "Upon the question of the election and qualification of a member there cannot be such a thing as a final decision in the sense of a decision conclusive upon the House until final adjournment for the term for which the members, in this instance, were elected. The authority to pass upon the membership is a continuing one and runs throughout the term. It is so complete and conclusive, relator may be seated today after a hearing and deprived of his office tomorrow upon the same facts." You are the sole judges of the law and the facts.

As to whether or not any person not a member of your body may contest one holding a certificate of election, your decision would be likewise final. If either party to this contest has any legal authorities on this question we suggest that they submit such authorities direct to your committee.

In plain language the Supreme Court of this State has said that at this time it is without authority to determine the law which must govern you in this decision, certainly the Attorney General's office has no greater authority.

As a matter of public policy we think that every citizen has an interest in the membership of the legislature. By the constitution he has the right to petition. Whether his petition be granted is a matter for the legislative discretion.

While the Corrupt Practices Act (Initiative Act Nov. 1912, Section 10773, R. C. M. 1921, et seq.) is not binding upon the Legislature in the judging of the qualifications of its members (State vs. District Court, 50 Montana 134, 145 Pacific 721), yet in that act the people expressed their idea of what constitutes good public policy when they provided (Section 10810, R. C. M. 1921) that "any elector of the state, or of any political or municipal subdivision thereof may contest the right of any person to any nomination or office for which such elector has the right to vote. . . ."

We regret our inability to render a more definite decision in this matter.