

**Opinion No. 577****Elections—Primary Election—Legal  
Holidays—Holidays.**

HELD: Primary election day, July 17, 1934, is a legal holiday within the meaning of Section 10, R. C. M., 1921.

July 16, 1934.

You ask whether or not primary election day, July 17, 1934, is a legal holiday within the meaning of Section 10, R. C. M., 1921.

In my opinion it is such a legal holiday. Former Attorney General Poindexter held (6 Opinions of Attorney General 376) that the presidential preference primary election was a legal holiday.

Former Attorney General Foot held (14 Opinions of Attorney General 70) that an election called to vote on increasing state indebtedness, as required by Section 2 of Article XIII of the Constitution of the State of Montana, was a legal holiday. Since that time the Supreme Court (*Arps v. State Highway Commission*, 90 Mont. 152) has held that an election under Section 2 of Article XIII of the Constitution is a general election even though called specially.

The coming primary election presents a much stronger case than any of the foregoing because it meets not only the definitions given by some courts that it is one regularly recurring in each election precinct of the state on a day designated by law for the election of officers, but it also meets the definition in the case of *Arps v. State Highway Commission*, supra, in that it is state-wide and one at which all of the people entitled to vote may vote upon a question affecting them as a whole, particularly since it involves the final vote upon delegates to the convention for the consideration of the 21st Amendment to the Constitution of the United States.

If further definitions and distinctions are desired, we refer you to the case of *Arps v. State Highway Commission*, *supra*, and cases cited therein.