

to have his name appear on the ballot horizontally in line with the names of party candidates seeking the same office he is seeking.

October 3, 1934.

Your request for our opinion is as follows:

"Section 681 of the Revised Codes of Montana provides for the form and arrangements of the names of the candidates upon the ballot, showing by the sample ballot given that the names of the candidates of the various parties shall be placed in vertical columns with the opposite candidates' names opposite each other horizontally.

"It seems as if local prejudice or convenience of the publisher of the ballots may set the provisions of the law pertaining to such matters aside as shown by a sample ballot of the 1932 general election submitted herewith. My opinion at the time of the printing of said ballot was and still is that it was not in legal form. There will be a number of independent candidates again this year and I am of the opinion that they are entitled to have their respective names directly opposite those of their respective opponents for the same offices. May I have your opinion?"

Section 681, Revised Codes, 1921, provides:

"681. Ballots prepared under the provisions of this chapter must be white in color and of a good quality of paper, and the names must be printed thereon in black ink. The ballots used in any one county must be uniform in size, and every ballot must contain the names of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of law, and no other names. The list of candidates of the several parties shall be placed in separate columns of the ballot, in such order as the authorities charged with the printing of the ballots shall decide. As near as possible the ballot shall be in the following form:

Opinion No. 618

**Elections—Ballot, Arrangement of
—Independent Candidates.**

HELD: An independent candidate for office is entitled, if it be possible.

DEMOCRATIC	REPUBLICAN	LABOR PARTY
For Governor:	For Governor:	For Governor:
<input type="checkbox"/> Joseph K. Toole	<input type="checkbox"/> John E. Richards	<input type="checkbox"/> Fred Whiteside
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Lieut. Governor:	For Lieut. Governor:	For Lieut. Governor:
<input type="checkbox"/> Frank C. Higgins	<input type="checkbox"/> Alex C. Botkin	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
For Sec. of State	For Sec. of State	For Sec. of State
<input type="checkbox"/> Geo. M. Hays	<input type="checkbox"/> Louis Rotwitt	<input type="checkbox"/> W. R. Allen
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

and continuing in like manner as to all candidates to be voted for at such election."

"683. Below the names of candidates for each office there must be left a blank space large enough to contain as many written names of candidates as there are persons to be elected. There must be a margin on each side of at least half an inch in width, and a reasonable space between the names printed thereon, so that the voter may clearly indicate, in the way hereinafter provided, the candidate or candidates for whom he wishes to cast his ballot."

It would seem from the diagram in Section 681 and the language of Section 683 that where one political party has not and another political party has a candidate for a particular office, it was the intention of the legislature that the space underneath the designation of such office in the column of the political party without a candidate should equal the space underneath the designation of such office in the column of the political party with a candidate, and that the designations of the office next succeeding it on the ballot should be in line clear across the ballot. The legislative intent, once ascertained, must be given effect whenever possible. (*Conley v. Conley*, 92 Mont. 425; 59 C. J. 948.) Moreover, statutory provisions relating to the arrangement of the tickets on the ballot are mandatory (*State v. Marshall County*, 78 N. E. 1016; 20 C. J. 143) and must be substantially complied

with. (*State ex rel. Hay v. Alderson*, 49 Mont. 387; 60 C. J. 977.)

We know of no sound reason why the form of the ballot prescribed for party candidates should not apply also to an independent candidate so far as the position of his name in the horizontal rather than the columnar sense is concerned. In other words, if it be possible, his name should appear on the ballot in line with the name of party candidates seeking the same office as he is. That some time or another so many independent candidates may compete for the same office as to make the ballot cumbersome does not militate particularly against this view.

We do not wish to be understood as implying that a departure from the law on the part of a county clerk in preparing the official ballot may imperil the right of a person to an office for which he receives the highest number of votes at the general election. Such departure must be corrected, if at all, before the election is held. (*State ex rel. Brooks v. Fransham*, 19 Mont. 273; *Atkinson v. Roosevelt County*, 71 Mont. 165; 20 C. J. 152. See, also, *Chicago, etc. R. R. Co. v. Fallon County*, 95 Mont. 568, and *Tipton v. Mitchell*, 97 Mont. 420, 35 Pac. (2d) 110.)