

Opinion No. 289.

**Elections—Judicial Primary Ballots—
Number of Candidates Electors
May Vote for.**

HELD: An elector may vote for only one candidate in the non-partisan election for Chief Justice.

June 16, 1938.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

You have requested my opinion as to whether the "Judicial Primary Ballot" shall be arranged so as to direct and permit each elector to vote for one or two persons for the office of Chief Justice of Montana.

Section 812.7, R. C. M. 1935, reads:

"Each elector having the right to vote at a primary election shall be furnished with a separate 'Judicial Primary Ballot' at the same time and in the same manner as he or she is furnished with other ballots provided by law and each elector, without regard to political party, may mark such 'Judicial Primary Ballot' for one or more persons of his choice for judicial nominations, depending on the number to be nominated and elected, which shall be deposited in the general ballot box provided. The official number of such judicial primary ballot so delivered and voted shall correspond to the official number of the regular ballot of the elector. Every elector shall be entitled to vote, without regard to politics, for one or more persons of his choice for nomination for judicial office, depending on the number of places to be filled at the succeeding general election. Different terms of office for the same position shall be considered as separate offices."

Since there is only one place to be filled, to-wit: Chief Justice, we think that the section we have quoted above is controlling and that each elector may vote for only one candidate for Chief Justice. Had the legislature intended to permit an elector to vote for two persons for each place to be filled, it would have used the word "two" instead of "one" in the above section. The statute is clear and unambiguous and no construction is necessary in order to determine its meaning. We do not think there can be any room for argument without changing the act of the legislature.

Aside from the statute itself, we see no reason why a voter should be permitted to vote for two persons for one

office. Since party machinery for electing justices of the supreme court and judges of the district courts has been done away with, each voter is his own party and selects his own candidate for the office to be filled. We see no reason why he should be required or permitted to set up the candidacy of a second person to defeat the person of his choice. Moreover, such a law would inevitably lead to the evil known as "singling," by which some voters might be induced to vote for only one person, thereby giving them more voting strength by concentrating on a single candidate, while other voters would scatter their voting strength by voting for two candidates. The force of this is better illustrated where there are two candidates for one office. If a voter is permitted to vote for two for each office, then some voters might concentrate their voting strength by voting for just one candidate while other voters would vote for four. This would give a tremendous advantage to the candidate who could induce voters to "single" or vote for just him alone. We think the legislature acted advisedly and wisely in drafting this statute as it stands.

It is therefore my opinion that the Judicial Primary Ballot should be arranged so as to direct and permit each elector to vote for only one person for Chief Justice.