

whether pasters, containing the name of a new nominee to fill the place of a vacancy among candidates, should be affixed to the ballot by the county clerk himself or by the judges of election in the various precincts.

Section 680, R. C. M. 1935, provides:

"When any vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this code to fill such vacancy, the officer whose duty it is to have the ballots printed and distributed must thereupon have printed a requisite number of pasters containing the name of the new nominee, and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election, whose duty it is made by the provisions of this chapter to distribute the ballots, must affix such pasters over the name for which substitution is made in the proper place on each ballot before it is given out to the elector."

Where the county clerk has sent the ballots to the judges of election and has parted with the possession of the ballots before he has received the certificate of the new nominee, he must mail the pasters to the judges of election, who are required to affix them to the ballots.

Where the county clerk has not yet sent the ballots to the judges of election and still has them in his possession, and has time to affix the pasters to the ballots before they are sent to the judges of election, it is my opinion that it is the spirit and intention of the law that he should affix the pasters himself for the following reasons:

1. It is the duty of the county clerk to prepare the ballots and to cause the name of every candidate to be printed on the ballot (Section 678, R. C. M. 1935, as amended by Chapter 203, Laws of 1937). This section and the other sections of the Code relating to the preparation of the ballots must be read together with Section 680, in order to determine the intention of the legislature.

2. There is no necessity for sending the pasters to the judges of election to be by them affixed to the ballot, where the county clerk is able to do so himself and it is his duty to see that the ballots are properly prepared.

Opinion No. 348.

Elections—Ballots—Pasters.

HELD: Where ballots have not been sent by the county clerk to the election judges, and the clerk has time to do so, he may affix the pasters of a new nominee.

November 4, 1938.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

Dear Mr. Anderson:

You have submitted the question

3. Only when necessary should the judges be permitted to make any changes in the ballot for the reason that there is obvious danger that such changes may not be made at all, or made incorrectly or in an improper manner; for example, affixing the paster on the ballot in the presence of the voter and thus calling his special attention to the candidate whose name is affixed.

4. Unless the county clerk does affix the pasters they would not be affixed at all on absent voters ballots and thus such voters would not be given an equal opportunity to express their choice.

5. Statutes should be liberally construed with a view to effect their objects and to promote justice. Section 4, R. C. M. 1935, provides:

“The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the codes or other statutes of the State of Montana. The codes establish the law of this state respecting the subjects to which they relate and their provisions and all proceedings under them are to be literally construed with a view to effect their objects and to promote justice.”

We think this principle is particularly applicable to election laws in order to permit a fair and honest election and to give all the electors an equal and fair chance to vote for the candidates of their choice. (See 20 C. J. 169, Sec. 201.)

Ballots are prepared for the convenience of the voters. The names of the various candidates are placed thereon so that all the voters may be given an opportunity to express their choice. All of the voters have that right. That is the object and purpose of the law. No candidate has any right to insist upon voters being supplied with defective and inadequate ballots in order that he may derive some advantage therefrom. The law contemplates that pasters of new nominees shall be affixed to all ballots in order that all voters may be permitted to express their will. Where this is properly done by the county clerk, no one is in a position to complain.

Statutes *in pari materia* should be construed together (Putnam v. Putnam, 86 Mont. 135, 282 Pac. 855; 59

C. J. 1038). A liberal construction of all the statutes pertaining to the preparation of the ballot and the placing of the names of the candidates thereon, leads to the conclusion that where possible for him to do so, the county clerk should see to it that the ballot contains the names of all the candidates, and this important task, except where it is unavoidable, should not be left to the many election judges who are concerned with other duties.

As an added precaution, in order to accomplish the object of the law, it is suggested that the county clerk could not be criticized if he supplied the judges of election with a few extra stickers in case a paster should fall off or a ballot should be inadvertently overlooked by the county clerk.