Opinion No. 252.

Elections—Ballots, Arrangement of—
Candidates, Rotation on Ballot.

HELD: Manner of aranging ballot;
rotation of names, and position of
parties on ballot explained.

August 22, 1940.

Mr. Harold K. Anderson
County Attorney
Helena, Montana

Dear Mr. Anderson:

You have requested our opinion upon
the following question:

"How shall the ballot be printed
and provide for rotation and conform
to Chapter 81, Laws of 1939?"

Chapter 81, Laws of 1939, amends
several sections of the 1935 Code
(notably Section 681), and relates par-
ticularly to the form of ballot to be
uesd in general elections, the purpose
being undoubtedly to give all candi-
dates as fair a chance as possible by
the placement of names and positions
on the ballot. The opening clause of
subsection (b) of Section 2 of the said
law provides for the arrangement of
the names of the candidates and the
respective positions of the offices of
such candidates It reads.

"The names of all candidates shall
be arranged alphabetically according
to surnames under the appropriate
title of the respective offices."

This particular paragraph does not
conflict with paragraph 2 of the act.
Paragraph 2 relates to the rotation of
the names on the ballots.
The various county clerks and re-
corders of the various counties, having
in charge the arrangement of the bal-
lot, undoubtedly are concerned with
the arrangement of the names of the
candidates on the ballot. In other
words, your desire is an interpretation
of Section 2, subsection (b) of the Act.
Under Section 2, subsection (b), it is
provided:

"The names of all candidates shall
be arranged alphabetically according
to surnames under the appropriate
title of the respective offices. * * *
When two or more persons are
candidates for election for the same

office, including presidential and vice presidential candidates, it shall be the duty of the county clerk in each of the counties of the state to divide the ballot forms provided by law for the county, into sets so as to provide a substantial rotation of the names of the respective candidates as follows:

"He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office, and he shall so arrange said sets that the names of the candidates shall, beginning with a form arranged in alphabetical order, * * * be rotated by removing one name from the top of the list for each office, and placing said name or number at the bottom of that list for each successive set of ballot forms; provided, however, that no more than one of the said sets shall be used in printing the ballot for use in any one precinct, and that all ballots furnished for use in any precinct shall be of one form and identical in every respect. It is further provided that candidates of the two major parties as hereinabove defined shall be rotated as one group and the candidates of the minor parites and independent candidates shall be rotated as another group so that the candidates of the two major parties for a particular office shall appear on the ballot before and above any candidates of the minor parties or independent candidates."

This provision also sets forth that for the purpose of rotation of presidential and vice-presidential candidates, the offices of president and vice-president, together with presidential electors, shall be considered as a group and alphabetized under the name of the candidate for president.

Under the above, then, it would be proper to list the candidates for a particular state office in the first column alphabetically according to the surnames of the candidates. For example, if A, B, and C were candidates for governor, they would appear in that order on the first set. On the second set the names will be rotated by removing from the top the name of A and placing said name at the bottom. The order then of the second set of ballots would be B, C, A. On the third

set, B would be rotated by removing the name from the top and placing it on the bottom. The order then would be, C, A, and B.

In the second paragraph under subsection (b) of Section 2 of the said chapter, it is provided that the whole number of ballot forms shall be divided into sets equal in number to the greatest number of candidates for any office. Consequently, if there be five candidates for the office of governor and that is the greatest number of candidates for office on the entire ballot, then five sets should be arranged for the election. This illustration presupposes that all candidates would belong to parties of equal rank and no question as to major or minor parties is presented.

The said act further provides that the candidates of the two major parties shall be rotated as one group, and the candidates of the minor parties and independent candidates shall be rotated as another group, and that the candidates of the major parties shall appear at all times on the ballot before and above any candidates of the minor parties or any independent candidates. For example, assume that A and B are the Democratic and Republican candidates respectively for the office of president. C, D, and E are the candidates for the same office under such party designations as the Communist, Socialist, Union Candidate, etc. C, D, and E are candidates then of the minor parties and a rotation will occur between A and B as to the major parties and between C, D, and E as to the minor parties. There will be no rotation as between A, B, C, D, and E since the separate groups are to rotate within themselves.