

No. 253

**COUNTY CLERK—SCHOOL DISTRICTS—FEES FOR
PREPARING LISTS OF ELECTORS—ELECTIONS**

Held: A county clerk may not charge a school district of the second or third class for poll books or lists of electors in connection with the holding of an election to make an extra levy.

September 24, 1941.

Mr. Gedor B. Aronow
County Attorney
Toole County
Shelby, Montana,

Dear Mr. Aronow:

You have asked whether or not the county clerk may charge School District No. 2 of your county five cents per name for preparing the list of registered voters for the school district on holding an election to make an extra levy.

Generally speaking, the power of a public officer is limited by the statute conferring the power. (In re Farrell, 36 Mont. 254, 92 Pac. 785.) It follows the county clerk can charge no fee unless some statute authorizes him to do so.

Under Section 571 of the Revised Codes of Montana, 1935, the county clerk may charge three cents for each name entered on poll books for election in a city, town or school district of the **first class**. Before the last amendment of this section in 1935 the charge was five cents per name. School District No. 2 of Toole County is not a district of the first class and so no charge can be made for preparing poll books for that district under the well-established rule of "expressio unius est exclusio alterius."

An election for an extra levy is conducted as other school elections. (Section 1222 of the Revised Codes of Montana, 1935.) Apparently no provision is made for payment of the county clerk for making poll books

or lists of electors for any school district election except elections in districts of the first class. It should not be overlooked, however, that the county clerk is specifically authorized to make a charge of five cents per name for each name included in poll books prepared for school district bond elections regardless of the class of the school district. (Section 1224.12 of the Revised Codes of Montana, 1935.)

The conclusion specific authority must be found for charging a school district any fee for preparing poll books or lists to be used in an election is supported by Section 4893 of the Revised Codes of Montana of 1935 which provides, generally, no fees must be charged the state, or any county or any subdivision thereof (including school districts), but such services must be performed without charge. Special statutes requiring the payment of fees would prevail over the general statute. (In re Wilson's Estate, 102 Mont. 178, 195, 56 Pac. (2nd) 733, 105 A. L. R. 367.) However, we find no special statute authorizing the charging of a fee under the circumstances outlined by you.

It is my opinion a county clerk may not charge a school district of the second or third class for poll books or lists of electors in connection with the holding of an election to authorize an extra levy.

Sincerely yours,

JOHN W. BONNER
Attorney General