

No. 412

COUNTIES—ELECTIONS, county manager plan may be submitted at primary—COUNTY OFFICERS—OFFICERS, county manager plan, effect of on

Held: The primary nominating election held the third Tuesday of July is the "next regular election" within the meaning of Section 4954.2 of the Revised Codes of Montana, 1935, relating to submitting the question of adopting the county manager form of county government. In the event the county manager form of government is adopted by the vote of the electors of the county at said election, the nomination of any candidates for offices—to be filled by appointment rather than election under the county manager form of government—would be of no force or effect.

May 11, 1942.

Mr. George D. Ore
County Attorney
Petroleum County
Winnett, Montana

Dear Mr. Ore:

You have asked the opinion of this office whether the question of adopting the county manager form of county government may be sub-

mitted at the primary election. You have also asked whether persons running for office would take office only in the event of the rejection by the electors of the proposal to adopt the county manager plan.

Section 4954.2 of the Revised Codes of Montana, 1935, requires the county commissioners submit the question "at the next regular election or call a special election for the purpose." We find no definition in Montana of the term "regular election." It is generally said the phrase "has no fixed and inflexible meaning," yet it is generally understood to exclude special elections and, broadly, to mean elections recurring at stated times fixed by law. (53 C. J. 1169.) In the case of *State v. Andersen*, 110 Or. 1, 222 Pac. 585, 587, it is said:

"A regular election is an election recurring at stated times, fixed by law; while a special election is one arising from some exigency outside the usual routine."

The term "next regular election" is defined in the cases of *Matthews v. County of Shawnee*, 34 Kan. 606, 9 Pac. 765, 769, and *Ward v. Clark*, 35 Kan. 315, 10 Pac. 827, as meaning "the next election held conformably to establish rule of law." It would appear a primary nominating election, which is held conformably to Section 632 of the Revised Codes of Montana of 1935, and which recurs at stated times, that is, "on the third Tuesday of July preceding any general election . . . at which public officers in this state and in any district or county are to be elected" is a regular election, and, figuring from the present date, it is the "next regular election."

Section 5 of Article XVI of the Constitution of Montana enumerates the officers which "shall be elected in each county." This would indicate county officers cannot legally be named in any manner other than election. However, Section 7 of Article XVI provides:

"The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties . . . and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved."

It is probably under the authority of this section of the Constitution the legislature enacted Chapter 109 of the Laws of 1931, which became Chapter 374 of the Political Code of the Revised Codes of Montana of 1935, providing for a county manager form of county government. Section 4954.19 of the Revised Codes of Montana of 1935 provides all county officers—except the county attorney and the county commissioners—shall be appointed by the county manager. It is clear that, if the electors of Petroleum County vote favorably to the adoption of the county manager form of government at the primary nominating election in July, there will be no elective county offices to be filled at the general election, except county attorney and county commissioners. No officers except the two mentioned would be elected at the general election in November. The nominations at the primary election of any persons for offices which at the same election were made non-elective by the adoption of the county manager form of government must be held to be of no force or effect.

It is my opinion the primary nominating election held the third Tuesday of July is the "next regular election" within the meaning of Section 4854.2 of the Revised Codes of Montana of 1935, relating to submitting the question of adopting the county manager form of county government.

It is also my opinion that, in the event the county manager form of government is adopted by the vote of the electors of the county at the said election, the nomination of any candidates for office—to be filled by appointment rather than election under the county manager form of government—would be of no force or effect.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General