

Opinion No. 231.

**Secretary of State—County Clerks—
Candidates, Nominated at Primary
Election—Elections.**

Held: The Secretary of State need not telegraph the various county clerks of the state of Montana, within 24 hours after the canvass of the returns for state offices shall have been

completed of any primary election, but should use every means possible to, facilitate the early receipt by such clerks of the full list of candidates whose names may be printed on the official ballot, all of whom will not be known until after the final date for independent and minority party nominations.

July 27, 1944.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

You have requested an opinion of this office asking if you should follow the directions of Section 4 of Chapter 101, Laws of 1943, or the provisions of Chapter 104, Laws of 1943, in certifying to the various county clerks of Montana the candidates to be placed on the general election ballots.

Section 4, Chapter 101, Laws of 1943, provides as follows:

"It is hereby made the duty of the secretary of state, immediately and within twenty-four (24) hours after the canvass of the returns for state offices shall have been completed of any general primary election, to transmit by telegram to each of the several county clerks of the state of Montana the names of any and all candidates of each and every political party which may be entitled to be printed on the official ballot for the general election to be held within the state of Montana."

Chapter 104, Laws of 1943, provides as follows:

"That Section 619 of the Revised Codes of Montana of 1935, is hereby amended to read as follows:

"Section 619. Not less than forty-five (45) nor more than ninety (90) days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state."

You inform me the canvass of the primary election of July 18, 1944, will be completed not later than August 2, 1944. You further refer to the provisions of Chapter 105, Laws of 1943, which provides in part as follows:

"That Section 618 of the Revised Codes of Montana, 1935, be, and the same is hereby amended to read as follows:

"Section 618. Certificate of Nomination to be filed with the secretary of state must be filed not less than ninety (90) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not less than ninety (90) days before the election . . ."

Chapter 101, Laws of 1943, was enacted primarily for the purpose of expediting the voting of persons in military service. This intention is plainly expressed in Section 21 of said act, which section reads as follows:

"Nothing in this act shall be deemed to repeal or amend any of the provisions of law now existing relating to elections, but this act shall be construed as supplementary to all such laws and designs to carry into effect the purposes herein expressed, but in case of conflict or apparent conflict, the provisions of this act shall, within its scope and purpose, prevail." (Emphasis Mine).

This particular section of the act is given special emphasis by the Supreme Court of the state of Montana, in the case of Maddox and Lamey v. Board of State Canvassers of Montana, decided May 22, 1944. The court, in its opinion, underscored the words "within its scope and purpose."

Thus, in light of the above Montana decision, it is well for anyone considering the act to keep in mind what is "within its scope and purpose" of the said act.

The court in said case states further as follows:

"It seems apparent that the sole purpose of the chapter was to insure the widest possible participation in elections by increasing to the utmost the opportunity for the state's

electors in military service to cast their votes effectively . . .”

It is true the court in the above decision stated it was their conclusion that Sections 1 to 11 inclusive, are valid and operative, but it is also true that in enumerating the things they felt were all right, they did not consider the question under inquiry here. The question under inquiry here was not before the court, and it is presumable, at least, that the court may not have considered the question herein involved in making the statement relative to said Sections 1 to 11, inclusive.

From a reading of said Chapter 101 as a whole, and the decision of the Montana Supreme Court pertaining thereto, it is conclusive to me that the legislature in enacting and the Court in passing on the said chapter, intended that the purpose of the act was to deliver to the voters in military service complete ballots for the general election at as early a date as may be possible, but the chapter was not intended to go further, nor was it to be construed as going further, than the legal accomplishment of that purpose.

In accordance with Chapter 105, Laws of 1943, independent candidates and minority parties may file nominating petitions up to and including the 8th day of August, 1944, and by doing so, have a legal right to have their names appear on the official ballot at the general election to be held on November 7, 1944. Chapter 104, Laws of 1943, provides that the secretary shall certify such candidates to the local county clerks not more than ninety (90) nor less than forty-five (45) days before the general election. Thus, it would be impossible for the Secretary of State to certify to the various county clerks the complete list of candidates to be placed on the ballot by the 2nd of August, 1944, the date when all primary returns will be determined.

To require the Secretary of State to comply with Section 4 of Chapter 101, Laws of 1943, would add a great deal of expense to the conduct of the election and would cause considerable more work for that office, probably necessitating additional clerical expense. Compliance with the said Section 4 would not facilitate the earlier printing of the ballot as the returns

mailed, as has been formerly done, on or about the 2nd of August, 1944, would reach the various county clerks prior to the 8th day of August, 1944, and thus be available prior to the date on which the ballot could be put to press. The most the Secretary of State could send the county clerks prior to the 8th of August, 1944, would be the candidates nominated by the major parties and these candidates might not be all the candidates who will have a right to have their names on the official general election ballot. Thus, within 24 hours after the close of the canvass of votes of the primary election, the Secretary of State could not comply with said Section 4 in whole, in that the latter part of said section reads as follows:

“ . . . the names of any and all candidates of each and every political party which may be entitled to be printed on the official ballot for the general election. . . ”

Therefore, it is my opinion that the Secretary of State need not telegraph the names of the successful candidates in the primary election to the county clerks in the state of Montana, within 24 hours after the canvass of the returns of the primary election, but that the Secretary of State may mail the results of such canvass. However, to come within the purpose and intent of said Chapter 101, Laws of 1943, I believe the Secretary of State should use every means possible to facilitate the early receipt by such clerks of the full official ballot to be printed within ten days from the date of receipt of such information from the Secretary of State.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.