

Opinion No. 249.

**Registration of Electors—Electors—
Deputy Registrars—County Commis-
sioners, Appointment of by.**

Held: The county commissioners shall appoint a deputy registrar for each precinct in the county in accordance with Section 557, Revised Codes of Montana, 1935, as amended by Chapter 172, Laws of 1937.

September 11, 1944.

Mr. Ed C. Jones
County Attorney
Park County
Livingston, Montana

Dear Mr. Jones:

You have requested an opinion of this office pertaining to whether the county commissioners shall appoint deputy registrars in precincts within ten miles of the office of the county clerk and recorder.

Section 557, Revised Codes of Montana, 1935, as amended by Section 5 of Chapter 51, Laws of 1941, provides in part as follows:

“All . . . the county commissioners shall appoint a deputy registrar, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident in the precinct for which he is appointed and shall register electors in that precinct . . .”

Said Section 557 as amended was originally enacted by our legislature as Section 10 of Chapter 122, Laws of 1915, and as originally enacted read in part as follows:

“All Notaries Public and Justices of the Peace are hereby designated as Deputy Registrars for the purpose of carrying out the provisions of this act. The **County Clerk** of each county **may** appoint a Deputy Registrar in each precinct of such county distant more than ten miles from the **County Court House** wherein no Justice of the Peace or Notary Public resides . . .” (Emphasis mine.)

Our legislature enacted Chapter 38, Laws of 1917, specifically to amend said Section 10 of Chapter 122, Laws of 1915, and Chapter 38 was re-enacted as Section 557, Revised Codes of Montana, 1921, and re-enacted as the same section in the 1935 codes, which was amended by Chapter 172, Laws of 1937, only in respect to the pay of said deputy registrars, and in the same respect, amended again by Chapter 51, Laws of 1941.

The original enactment in 1915 provided only for the appointment of such deputies in precincts ten miles or more from the clerk's office, and had the legislature not intended to change that situation, I do not see the reason for the amendment. It is true Section 556, Revised Codes of Montana, 1935, provides in part as follows:

“If any elector resides more than ten miles distant from the office of the county clerk, he may register before the deputy registrar within the precinct where such elector resides . . .”

But it is to be noted that this is not a positive statement to the effect that electors residing within ten miles may not register with a deputy registrar. At the most it is merely a negative statement, while the language found in Section 557 regarding the appointment of deputy registrars for each precinct and authorizing them to register electors in that precinct is a positive direction to the county commissioners. Further, it should be noted that said Section 556 was enacted originally in 1913 and was amended by being incorporated in Chapter 122, Laws of 1915, as Section 9 of said chapter, the same chapter wherein said Section 557 was first enacted. At the time Section 556 was incorporated in Chapter 122, Laws of 1915, Section 557, then Section 10 of said chapter, was radically different, as herein pointed out, from what it is

at present and thus the quoted portion of Section 556 at that time was relevant in harmony with Section 10. It is true there would be less conflict of opinion had the legislature amended Section 9 of Chapter 122 at the same time it amended Section 10 of said chapter, but that the same was not amended must be looked at as a possible oversight and the express wording of Section 10 as amended by Chapter 38 must be given meaning. To do otherwise would be to disregard Chapter 38 as a whole. (See also pages 334 and 335, Report and Official Opinions of the Attorney General, Volume 8.)

It is therefore my opinion the legislature has made it mandatory that the county commissioners shall appoint a deputy registrar for each precinct in the county as directed by Section 557, Revised Codes of Montana, 1935, as amended by Chapter 51, Laws of 1941.

Sincerely yours,
R. V. BOTTOMLY
Attorney General