

1943, authorized by Chapter 217 of the Laws of 1943.

I shall discuss your questions separately.

I.

You ask:

“Should the Governor’s Proclamation be posted in the separate precincts (Section 535)? If so, is this at county or State Highway Commission expense?”

Section 20 of Chapter 217, Laws of 1943, provides the county commissioners and county clerk must, in all respects, carry out the provisions of the act in calling, advertising, and noticing the election as prescribed by the general election laws of this state—except as specifically prescribed in Chapter 217. Section 535, Revised Codes of Montana, 1935, contained in a chapter devoted to election proclamations, provides in part:

“The board of county commissioners, upon the receipt of such proclamation, may, in the case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election . . .”

If the county commissioners are to administer Chapter 217, Laws of 1943, as prescribed by the general election laws of this state, then it would appear, at first impression, such publication and posting of the Governor’s proclamation would be necessary. But it must be noted Section 535, supra, refers to “the receipt of such proclamation” as a condition precedent to the commissioners’ action of publishing and noticing. The word “such” refers to the proclamation or proclamations required by Sections 533 and 534 of the Revised Codes of Montana; and Section 533 requires the Governor to transmit copies of those proclamations to the boards of county commissioners of the counties in which such elections are to be held.

On the other hand, Section 13, Chapter 217, Laws of 1943, provides the manner of proclamation of election in this instance:

“Within two (2) days after the passage and approval of this act by the

Opinion No. 29.

Elections—Highway Debenture Election—County Officials

- Held: 1. The Governor’s proclamation of the election of June 8, 1943, need not be posted in the separate precincts.
 2. Each county clerk must cause to be posted, at least thirty days prior to May 28, 1943, in at least five conspicuous places in each voting precinct, notice to the effect registration for the June 8th election will be closed on May 28, 1943.
 3. Each county clerk must prepare and post a list of registered electors as required by Section 567, Revised Codes of Montana, 1935.
 4. At the election of June 8, 1943, the polls shall be open from eight o’clock A. M. until six o’clock P. M. In precincts having less than one hundred electors, the polls shall be open from one o’clock P. M. until six o’clock P. M.
 5. Notices of the election of June 8, 1943, should be prepared by the several clerks of the boards of county commissioners and mailed by them to the judges of election at least thirty days before the election, as provided in Section 594, Revised Codes of Montana, 1935.

April 1, 1943.

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

Dear Mr. Mitchell:

You have requested the opinion of this office on five questions with regard to certain procedure to be followed in holding the special election on June 8,

Legislative Assembly, the Governor shall by proclamation published in at least one (1) newspaper in each county of the State in the weeks of March 9th and March 16, 1943, set forth the fact of the calling of such election by this act, the time and places of holding the same and also the title of this act and the form of the ballots to be used in voting upon the same together with notice of the time when registration for this election shall be closed, as herein provided, and that voters eligible to vote at any general election shall be qualified, if already registered, or upon proper registration, as herein provided, to vote thereat."

I am informed by the Governor's office the duty placed upon the Governor by the above-quoted section was executed exactly as set out in the law. Since no transmittal of copies of the Governor's proclamation to boards of county commissioners throughout the state was required by the above-quoted section, or any other section, of Chapter 217, Laws of 1943, no such transmittal was made. Hence, the boards of county commissioners of the various counties have not received such proclamation, and receipt of a proclamation from the Governor is a condition precedent to any action by a board under the portion of Section 535 quoted above.

The very obvious intent and purpose of requiring posting and publishing of proclamations were to inform the electorate fully and completely of questions and issues to be presented to the people at the polls. In the case of Chapter 217 Laws of 1943, it is my opinion the legislative assembly did not intend that the provisions of Section 535, supra, apply, inasmuch as that body provided an extraordinary effective procedure for informing the electors of the June 8th election and the question to be voted thereon. Section 14 of Chapter 217 provides in part:

"The Secretary of State shall concurrently distribute to each county clerk a sufficient number of the copies of said act, in full, to furnish one (1) copy to every voter in each county. Each county clerk shall be required to mail to each registered voter in his respective county at least one (1) copy of the same on or before five (5) days after the closing of registration. . . ."

Chapter 217, Laws of 1943, did not require the Governor to transmit copies of his election proclamation to the various boards of county commissioners. It provided a specific and effective method of informing the electorate of the election. It is therefore my opinion the Governor's proclamation of the June 8th election, authorized by Chapter 217, Laws of 1943, need not be posted in the separate precincts.

II.

Your second question is:

"Should notices of closing of registration be posted in the several precincts (Section 566)? If so, for what length of time?"

Section 16, Chapter 217, laws of 1943, provides in part:

"The County Clerk of each county must cause to be published in a newspaper within his county having a general circulation therein in the week of April 28, 1943, a notice signed by himself to the effect that registration for the election herein called will be closed on May 28, 1943, and must also state that electors may register for such election by appearing before the county clerk at his office or by appearing before a deputy registrar, or before any notary public or justice of the peace in the manner prescribed by law."

Section 566, Revised Codes of Montana, 1935, is concerned with the procedure for the close of registration, and it is provided in the last sentence thereof:

"At least thirty days before the time when the official register is closed for any election, the county clerk shall cause to be posted, in at least five conspicuous places in each voting precinct at such election, notice of the time when the official register will close for such election."

As noted in answering your question I, supra, the county clerk is charged with following the general election laws in performing his duties with regard to Chapter 217, Laws of 1943, except where Chapter 217 makes a specific provision on a matter. Hence, I am of the opinion each county clerk shall cause to be posted, at least thirty days prior

to May 28, 1943, in at least five conspicuous places in each voting precinct, notice to the effect registration for the June 8th election will be closed on May 28, 1943.

III.

Your third question is:

"Should lists of registered electors be prepared and posted (Section 567)?"

Section 567, Revised Codes of Montana, 1935, provides in part:

"The county clerk shall cause to be posted, not less than fifteen days before any municipal, primary nominating election, and not less than thirty days before any other election, as in this act provided for, at least five copies of such printed registry list in at least five conspicuous places within said precinct, a copy of the list of registered voters herein provided for, and shall retain sufficient number of said printed lists of registered voters in his office as may be necessary for the convenience of the public. . . ."

It is my opinion the county clerks should follow the procedure outlined above with respect to the June 8th election authorized by Chapter 217, Laws of 1943.

IV.

Your fourth question is:

"What are the opening and closing hours of the polls (Section 689)?"

It is my opinion Section 689, Revised Codes of Montana, 1935, answers your question. The section is clear, unambiguous and specific:

"The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until six o'clock in the afternoon of said day, when the same must be closed; provided that in precincts having less than one hundred (100) registered electors the polls must be opened at one o'clock in the afternoon of election day and must be kept open continuously until six o'clock in the afternoon of said day, when they must be closed; provided, further, that whenever all registered electors in any precinct have voted the polls shall be immediately closed."

See also Volume 14, Report and Official Opinions of the Attorney General, page 71, where the then Attorney General held Section 689 was controlling with regard to the election on highway debentures held in 1931.

V.

Your last question is:

"Is it necessary to prepare notices of election and post the same (Section 594)?"

Section 594, Revised Codes of Montana, 1935, provides the clerks of the several boards of county commissioners must, at least thirty days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners three written notices for each precinct, to the effect an election shall be held at the place designated "on the first Tuesday after the first Monday of November, 19....."

Please notice the form prescribed by the legislative assembly has contained therein the words, "on the first Tuesday after the first Monday of November, 19.....," and would appear to apply only to the biennial general election held on that date. Application to that election is, no doubt, what the legislative assembly of this state intended when it enacted Section 594—but, now, the 1943 legislative assembly, in Section 20, Chapter 217, Laws of 1943, has asserted that Section 594, Revised Codes of Montana, 1935, shall apply to the highway debenture election on June 8th of this year, as well. To be certain, Section 20 does not provide that in so many words; but by its declaration the general election laws of the state shall be followed reaches the same result.

It is therefore my opinion notice of election should be prepared as provided in Section 594, Revised Codes of Montana, 1935. Naturally, the notice set forth in that section must have its wording changed so that it will give notice of an election on June 8th, 1943.

In summary, your questions are answered as follows:

1. The Governor's proclamation of the election of June 8, 1943, need not be posted in the separate precincts.
2. Each county clerk must cause to be posted, at least thirty days prior

to May 28, 1943, in at least five conspicuous places in each voting precinct, notice to the effect registration for the June 8th election will be closed on May 28, 1943.

3. Each county clerk must prepare and post a list of registered electors as required by Section 567, Revised Codes of Montana, 1935.

4. At the election of June 8, 1943, the polls shall be open from eight o'clock A. M. until six o'clock P. M. In precincts having less than one hundred electors, the polls shall be open from one o'clock P. M. until six o'clock P. M.

5. Notices of the election of June 8, 1943, should be prepared by the several clerks of the boards of county commissioners and mailed by them to the judges of election at least thirty days before the election, as provided in Section 594, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General