

Opinion No. 131.

Schools and School Districts—Elections, School Districts—Trustees, School Districts—Nomination, of Trustees.

Held: A public meeting at which candidates for the office of school trustee of a first class school district are nominated must be held forty full days before the date of the election, and as held in the above case, the day of the meeting and the day of the election must be excluded from the computation of the forty-day period.

March 5, 1946.

Mr. Horace J. Dwyer
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Dwyer:

You have submitted the following for my consideration:

The Clerk of School District No. 10, Deer Lodge County, Montana, has advised you that a group of fifty-seven electors held a meeting on Monday night, February 25, 1946. He stated that no notice was published or extended to the public to attend said meeting, but, on the other hand, an invitation or request was extended by telephone to the said electors that attended said meeting. The purpose of the meeting was to nominate two nominees to run for trustees of the school district. Did that constitute a "bona fide public meeting" in accord with Section 990, Revised Codes of Montana, 1935, as amended by Chapter 205, Laws of 1943, at page 399?

Section 990, Revised Codes of Montana, 1935, as amended by Chapter 205, Laws of 1943, provides in part:

"In districts of the first class, no person shall be voted for or elected as trustees unless he has been nomi-

nated therefor at a bona fide public meeting, held in the district not more than sixty (60) days nor less than forty (40) days before the day of election, and at which at least twenty (20) qualified electors were present..."

The meeting in question was held on February 25th and the election is to be held April 6th. (Section 987, Revised Codes of Montana, 1935.) The meeting was held more than the forty days before the election if the day of the election is counted as one of forty days. However, if the day of election is excluded from the computation, the meeting was held on the fortieth day before the election and the statute provides the meeting should be held not "less than forty (40) days before the election."

Our Supreme Court in *State v. Mountjoy*, 82 Mont. 594, 268 Pac. 558, considered a statute which required that petitions for nominations be filed "not less than forty days before the date of the primary nominating election." The court said in construing the provision:

"The language of the statute is exclusive, and Section 10707, Revised Codes of 1921, providing that 'the time in which any act provided by law is to be done is computed by excluding the first day and including the last,' etc., relied upon by the learned counsel appearing in support of the secretary of state's position is without application. (*State ex rel St. George v. Justice Court*, 80 Mont. 53, 257 Pac. 1034.) As the act here required must be done at least forty days before the date of the primary election, which is July 17 this year, it is manifest that July 17 cannot be included in computation of the forty-day period. The statute says it must be prior to the date of election, July 17, and forty days before July 17 would be June 6, as full days are required and the date of filing must be excluded from computation."

The above quoted case is conclusive of the meaning of the language used in Section 990, as amended.

It is therefore my opinion that a public meeting at which candidates for the office of school trustee of a first

class school district are nominated must be held forty full days before the date of the election, and as held in the above case, the day of the meeting and the day of the election must be excluded from the computation of the forty-day period.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General